

Exhibit 1

Dr. Thomas Marsoner - December 15, 2015

Page 1

1

2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

3

4

In re)

5

LEHMAN BROTHERS HOLDING INC.,) Chapter 11

6

et al.,)

7

Debtors.) Case No.

8

_____) 08-13555 (SCC)

9

10

11

12

VIDEOTAPED DEPOSITION OF DR. THOMAS

13

TUESDAY, DECEMBER 15, 2015

14

9:45 a.m.

15

16

17

18

19

Video deposition of DR. THOMAS

20

MARSONER, taken by Lehman Brothers Holdings Inc.

21

and Lehman Brothers Commercial Paper Inc., at

22

the offices of Hogan Lovells, 875 Third Avenue,

23

New York, New York, before Brandon Rainoff, a

24

Federal Certified Realtime Reporter and Notary

25

Public of the State of New York.

Dr. Thomas Marsoner - December 15, 2015

Page 2

1

2

A P P E A R A N C E S

3

4

5

WEIL, GOTSHAL & MANGES LLP

6

Attorneys for Lehman Brothers Holdings Inc. and

7

Lehman Brothers Commercial Paper Inc.

8

767 Fifth Avenue

9

New York, New York 10153-0119

10

212. 310. 8000

11

BY: DENISE ALVAREZ, ESQ.

12

212. 310. 8965

13

denise.alvarez@weil.com

14

JACQUELINE MARCUS, ESQ.

15

212. 310. 8130

16

jacqueline.marcus@weil.com

17

MAURICE HORWITZ, ESQ.

18

212. 310. 8883

19

maurice.horwitz@weil.com

20

21

22

23

24

25

Dr. Thomas Marsoner – December 15, 2015

Page 3

1

2

A P P E A R A N C E S (continued)

3

4

5

HOGAN LOVELLS

6

Attorneys for Dr. Thomas Marsoner

7

875 Third Avenue

8

New York, New York 10022

9

212.918.3000

10

BY: PIETER VAN TOL, ESQ.

11

212.909.0661

12

pieter.vantol@hoganlovells.com

13

M. SHANE JOHNSON, ESQ.

14

212.918.3775

15

shane.johnson@hoganlovells.com

16

17

18

ALSO PRESENT:

19

THOMAS E. HOMMEL, ESQ., Lehman Brothers

20

EDDIE ARCHILLA, Videographer

21

22

23

24

25

Dr. Thomas Marsoner – December 15, 2015

Page 4

1

2

I N D E X O F E X A M I N A T I O N

3

4

5

Witness:

6

Dr. Thomas Marsoner

7

8

9

Examination:

10

By Ms. Alvarez.....Page 12

11

By Mr. Van Tol.....Page 192

12

By Ms. Alvarez.....Page 202

13

14

15

Index of Exhibits.....Page 5

16

17

18

Discovery Requests

19

By Ms. Alvarez.....Page 66

20

By Ms. Alvarez.....Page 115

21

By Ms. Alvarez.....Page 164

22

By Ms. Alvarez.....Page 165

23

24

25

Dr. Thomas Marsoner – December 15, 2015

Page 5

1

2

E X H I B I T S

3

4

Exhibit 1 35

5

Single-page e-mail from Thomas Bernard to Vittorio

6

Pignatti and others, dated Thursday, October 3, 2002,

7

Bates stamped LEH_0000415

8

9

Exhibit 2 41

10

Single-page e-mail from Denise Calus to Thomas

11

Bernard, dated Monday, October 7, 2002, Bates stamped

12

LEH_0000225

13

14

Exhibit 3 43

15

Single-page e-mail from Thomas Bernard to Vittorio

16

Pignatti and others, dated Tuesday, October 8, 2002,

17

Bates stamped LEH_0000412

18

19

Exhibit 4 60

20

Multipage document bearing the heading Lehman

21

Brothers, dated 13th February 2004, addressed to

22

Thomas Marsoner, and bearing no Bates stamps

23

24

25

Dr. Thomas Marsoner – December 15, 2015

Page 6

1	
2	Exhibit 585
3	Five-page document entitled Declaration of Dr. Thomas
4	Marsoner in Support of the Motion of Dr. Thomas
5	Marsoner to Deem Proofs of Claim to be Timely Filed
6	by the Claims Bar Date, with cover page labeled
7	Exhibit B, and bearing no Bates stamps
8	
9	Exhibit 688
10	Multipage e-mail chain bearing at the top of the
11	first page an e-mail from Thomas Marsoner to Thomas
12	Bernard, dated Thursday, December 1, 2005, and Bates
13	stamped LEH_0000214 through 217
14	
15	Exhibit 7104
16	Two-page e-mail chain bearing at the top of the first
17	page an e-mail from Thomas Marsoner to Thomas
18	Bernard, dated December 1, 2005, and Bates stamped
19	LEH_0000201 and 202
20	
21	Exhibit 8107
22	Single-page e-mail from Vittorio to David Stonberg
23	and others, dated Thursday, May 24, 2007, and Bates
24	stamped LEH_0000203
25	

Dr. Thomas Marsoner – December 15, 2015

Page 7

1
2 Exhibit 9110
3 Two-page e-mail chain bearing on the top of the first
4 page an e-mail from Thomas Marsoner to Jeremy Isaacs,
5 dated Wednesday, July 4, 2007, and Bates stamped
6 Marsoner00000159 and 160
7
8 Exhibit 10117
9 Two-page e-mail chain bearing on the top of the first
10 page an e-mail from Thomas Marsoner to Dan
11 Schwarzmann, dated Monday, December 3, 2012, and
12 Bates stamped Marsoner00000157 and 158
13
14 Exhibit 11125
15 Multipage document entitled Consent Order, bearing
16 the hand-written date at the top of the page 19th
17 June, 2014, and Bates stamped Marsoner00000217
18 through 227
19
20 Exhibit 12129
21 Multipage document entitled Lehman Brothers Europe
22 Limited – In Administration, Joint Administrators'
23 progress report for the period 23 September 2009 to
24 22 March 2010, dated 20 April 2010, and bearing no
25 Bates stamps

Dr. Thomas Marsoner – December 15, 2015

Page 8

1	
2	Exhibit 13145
3	Multipage document bearing on the first page an
4	e-mail from Tom Bernard to Thomas Marsoner, dated
5	December 12, 2014, and Bates stamped Marsoner00000032
6	through 41
7	
8	Exhibit 14152
9	Single-page e-mail from Tom Bernard to Thomas
10	Marsoner, dated February 3, 2015, with single-page
11	attachment, Bates stamped Marsoner00000042 and 43
12	
13	Exhibit 15158
14	Two-page e-mail chain bearing at the top of the first
15	page an e-mail from Christian Meissner to Thomas
16	Marsoner, dated January 28, 2015, with single-page
17	attachment, Bates stamped Marsoner000000624 through
18	626
19	
20	Exhibit 16166
21	Two-page letter from Vittorio Pignatti Morano to
22	Judge Chapman, United States Bankruptcy Court,
23	Southern District of New York, dated January 7, 2015,
24	and bearing no Bates stamps
25	

Dr. Thomas Marsoner – December 15, 2015

Page 9

1
2 Exhibit 17167
3 Multipage e-mail chain bearing at the top of the
4 first page an e-mail from Vittorio Pignatti to Thomas
5 Marsoner, dated December 4, 2002, with multipage
6 attachment, Bates stamped Marsoner 00000008 through
7 31
8
9 Exhibit 18174
10 Two-page letter from Vittorio Pignatti Morano to
11 Judge Chapman, United States Bankruptcy Court,
12 Southern District of New York, dated January 6, 2015,
13 Bates stamped Marsoner00000622 and 623
14
15 Exhibit 19184
16 Single-page letter from Ruggero Magnoni to Judge
17 Chapman, United States Bankruptcy Court, Southern
18 District of New York, dated January 14, 2015, and
19 bearing no Bates stamp
20
21 Exhibit 20186
22 Single-page e-mail from Thomas Marsoner to Ruggero
23 Magnoni, dated January 14, 2015, with single-page
24 attachment, Bates stamped Marsoner00000071 and 721
25

Dr. Thomas Marsoner – December 15, 2015

Page 10

1	
2	Exhibit 21 188
3	11-page document entitled Plan Administrators' First
4	Set of Document Requests to Dr. Thomas Marsoner
5	Pursuant to Rules 7026 and 7034 of the Federal Rules
6	of Bankruptcy Procedure, bearing no Bates stamps
7	
8	Exhibit 22 195
9	Multipage document entitled Notice of Hearing on
10	Motion of Dr. Thomas Marsoner to Deem Proofs of Claim
11	to be Timely Filed by the Claims Bar Date, with
12	multiple attachments, and bearing no Bates stamps
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

Dr. Thomas Marsoner - December 15, 2015

Page 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARSONER

* * *

P R O C E E D I N G

Tuesday, December 15, 2015

New York, New York

9:45 a.m.

* * *

THE VIDEOGRAPHER: This is media unit
number one in the deposition of Thomas Marsoner
in the matter of In Re Lehman Brothers Holdings
Inc.

This deposition is being held at Hogan
Lovells, located at 875 Third Avenue, New York,
New York, on December 15, 2015, at approximately
9:45 a.m.

My name is Eddie Archilla. I am the
video specialist. The court reporter is Brad
Rainoff, in association with Gregory Edwards,
located at 1120 Connecticut Avenue, Washington,
D.C.

For the record, counsel please
introduce themselves.

MS. ALVAREZ: My name is Denise
Alvarez with Weil, Gotshal & Manges representing
Lehman Brothers Holdings Inc. and Lehman

Dr. Thomas Marsoner - December 15, 2015

Page 12

1 MARSONER

2 Commercial Paper Inc.

3 MR. HORWITZ: Maurice Horwitz, Weil
4 Gotshal & Manges, representing Lehman Brothers
5 Holdings Inc. and Lehman Commercial Paper Inc.

6 MS. MARCUS: Jacqueline Marcus, Weil,
7 Gotshal & Manges, representing Lehman Brothers
8 Holdings Inc. and Lehman Commercial Paper Inc.

9 MR. HOMMEL: Thomas Hommel,
10 representative of Lehman Brothers Holdings Inc.

11 MR. VAN TOL: Pieter Van Tol from
12 Hogan Lovells representing Dr. Thomas Marsoner.

13 MR. JOHNSON: Shane Johnson from Hogan
14 Lovells representing Dr. Thomas Marsoner.

15 THE VIDEOGRAPHER: Now would the court
16 reporter please swear in the witness.

17 DR. THOMAS MARSONER,
18 having been duly sworn, was examined and
19 testified as follows:

20 EXAMINATION

21 BY MS. ALVAREZ:

22 Q. Good morning, Mr. Marsoner.

23 I have a few instructions for you, but
24 before that, have you been deposed before?

25 A. Have I been deposed before? Yes, on

Dr. Thomas Marsoner - December 15, 2015

Page 13

1 MARSONER

2 one occasion in the US, yes.

3 Q. Just once?

4 A. Just once in the US, yes.

5 Q. So I'm just going to remind you of
6 some -- a few basic instructions.

7 I'm going to ask questions and then
8 I'd like you to answer them. If you don't
9 understand a question, just let me know that you
10 didn't understand it and I will repeat it, I'll
11 clarify. If you answer a question, I'm going to
12 assume that you understood it.

13 Also, when answering questions, let's
14 answer verbally: "Yes," "no." You know,
15 don't -- sometimes we go: "Hm-hmm," "uh-huh,"
16 you know. The court reporter can't take that
17 down.

18 If at any point you want a break and
19 you need to use the restroom or you need to just
20 take a break, just let us know and we'll find a
21 good time to stop and break.

22 Did you understand those instructions?

23 A. I did. Thank you.

24 Q. Okay. Great.

25 Would you -- let's start with your

Dr. Thomas Marsoner - December 15, 2015

Page 14

1 MARSONER

2 address. Please state your address for the
3 record?

4 A. My resident address is number 20 Earls
5 Terrace, London W8 6LP.

6 Q. How long have you lived there?

7 A. Since April 2002.

8 Q. April 2002.

9 Have you had any other addresses since
10 April 2002 or have you been in the same place?

11 A. Yes, I've always had an Austrian
12 address, known under UK tax law as my domicile,
13 and that address is Andreas-Hofer-Strasse No.
14 43, 6020 Innsbruck, Austria.

15 Q. Any other addresses?

16 A. No addresses where one could serve
17 anything on me.

18 Q. Okay. Any vacation addresses?

19 A. I have generally spent my vacations in
20 hotels, on boats, occasionally with friends or
21 relatives. But certainly no useful
22 correspondence addresses other than these two.

23 Q. Are there any other addresses that you
24 characterize any other way, any other -- any
25 other place where you have spent your time

Dr. Thomas Marsoner - December 15, 2015

Page 15

1 MARSONER

2 whether it's vacation or business where it's not
3 a hotel?

4 MR. VAN TOL: Object to the form. You
5 may answer.

6 A. Sorry, I didn't really understand that
7 question.

8 Q. Are there any other addresses where
9 you have spent some time that is not a hotel or
10 a vacation address?

11 MR. VAN TOL: Same objection. You may
12 answer.

13 A. Okay, I think I've answered that
14 before. Certainly there have been boats. There
15 have been friends' houses. I have been in
16 family's houses. Occasionally I might have
17 rented a house for a week or a couple of weeks.

18 So, yes, I have certainly spent time
19 in places other than those two good permanent
20 addresses of mine, but they are not addresses
21 where I would have ever taken delivery of
22 anything.

23 Q. Where are you currently employed?

24 A. At M&M Capital Ltd. with a registered
25 address of 13 David Mews, London W1.

Dr. Thomas Marsoner - December 15, 2015

Page 16

1 MARSONER

2 Q. What's your position at the company?

3 A. I'm the chief executive of this small
4 M&A boutique.

5 Q. What are your responsibilities as
6 chief executive?

7 A. The company has one employed secretary
8 and has one chairman who lives in Italy. So
9 pretty much anything and everything that goes on
10 at the company is my responsibility.

11 Q. What's the name of the chairman?

12 A. The chairman is Ruggero Magnoni.

13 Q. What is his -- what are his
14 responsibilities at the company?

15 A. He chairs board meetings when we have
16 them roughly once a year. The way the setup
17 works is that we share expenditures, but we have
18 completely separate accounts for our revenues.
19 So transactions that I work on, my part of the
20 company is allocated the revenues, transactions
21 Ruggero is working on his part of the company is
22 allocated the revenues.

23 Q. How long have you been at M&M Capital?

24 A. Since I left Nomura, so that would
25 have been 2013.

Dr. Thomas Marsoner - December 15, 2015

Page 17

1 MARSONER

2 Q. What was your position at Nomura?

3 A. At Nomura I was vice chairman in
4 investment banking and the managing director.

5 Q. When did you start at Nomura?

6 A. I started at Nomura in June of 2009.

7 Q. Where did you work prior to June of
8 2009?

9 A. I was, from April 2001 until September
10 15, 2008, a senior advisor to Lehman Brothers,
11 self-employed senior advisor.

12 Q. Okay.

13 A. But I did not advise anybody other
14 than Lehman Brothers during those years.

15 Q. How did you end up at Nomura?

16 A. After Lehman went bankrupt, the
17 European and the Asian operations of Lehman were
18 bought by Nomura and a couple of my old friends
19 at Lehman asked me whether I would be prepared
20 to come on board again full-time to help them
21 build things up in the new Nomura world.

22 Q. Who were those old friends at Lehman?

23 A. Primarily Christian Meissner and
24 Michael Bonacker.

25 Q. I'm sorry, what was the second name?

Dr. Thomas Marsoner - December 15, 2015

Page 18

1 MARSONER

2 A. Bonacker, B-O-N-A-C-K-E-R, who
3 approached me, who had the original idea that it
4 would make sense for me to join them on a
5 full-time basis again.

6 Q. So Meissner, Christian Meissner was
7 working at Nomura --

8 A. Yes.

9 Q. -- as well?

10 And Michael Bonacker was as well?

11 A. Yes.

12 Q. You testified that you were senior
13 advisor at Lehman Brothers from April 2001 to
14 September 15, 2008.

15 What were your responsibilities as
16 senior advisor?

17 A. They were relatively varied and
18 relatively wide. There was certainly a focus
19 geographically in areas where I was known to
20 have an expertise and speak the language,
21 specifically, of course, Austria, Germany,
22 Switzerland.

23 My last full-time job at Lehman had
24 been head of industry coverage, so all the
25 industry groups reported to me. Financial

Dr. Thomas Marsoner - December 15, 2015

Page 19

1 MARSONER

2 institutions is my own specialty. I used to run
3 the financial institutions group, but a whole
4 number of other groups like consumer retail,
5 energy, telecom also reported to me.

6 And so I did have expertise in a whole
7 number of additional industries.

8 Q. Who did you report to?

9 A. Originally my contractual counter
10 party was Vittorio Pignatti through and
11 including the 2004 agreement, and that changed
12 when Pignatti changed jobs to Christian Meissner
13 from '06 to the end of Lehman.

14 Q. Do you know what Christian Meissner's
15 position was at Lehman?

16 A. At the time when he and I interacted
17 in that -- the contractual relationship, he was,
18 I think, co-head of European investment banking,
19 later became head.

20 Q. Other than Mr. Pignatti and Mr.
21 Meissner, did you work primarily for any other
22 individuals at Lehman?

23 A. If I may, I'd like to characterize
24 that I worked with other people.

25 Q. Okay.

Dr. Thomas Marsoner - December 15, 2015

Page 20

1 MARSONER

2 A. It was a very collegial place, and
3 when there was an opportunity that I had either
4 identified and thought useful to pursue, or
5 sometimes when Lehman had an opportunity where
6 Lehman thought that my expertise would be
7 useful, we would form teams ad hoc and would
8 work together on those. There were a whole
9 number of generally senior Lehman investment
10 bankers that I worked with over the years.

11 Q. Can you identify a couple of them?

12 A. Well, certainly Vittorio Pignatti,
13 himself. In the years when he was my
14 contractual counterpart, by definition I did
15 nothing that wasn't coordinated with him. That
16 then later changed, and later that was Christian
17 Meissner.

18 But in the years we're talking about,
19 it was certainly Vittorio Pignatti who was my
20 direct interlocutor on essentially everything,
21 certainly worked closely with Ruggero Magnoni as
22 well. Always had a very high regard for him.

23 There were other professionals like
24 Jonathan Rouner that in those years I worked
25 quite a bit with. Certainly Michael Bonacker

Dr. Thomas Marsoner - December 15, 2015

Page 21

1 MARSONER

2 who had the German brief. So he certainly
3 entered the picture relatively frequently. And
4 others. I could go for a long time.

5 Q. Where was -- what was Jonathan
6 Rouner's position at Lehman?

7 A. At the time he had an automotive M&A
8 brief, not for race cars but for general
9 automotive manufacturing. There was a specific
10 Canadian company that was a client of his where
11 I knew one of the senior board members who was
12 Austrian, actually several of them very well.
13 It was called Magna International, and Rouner
14 and I worked relatively closely on a number of
15 ideas for Magna International.

16 Q. Where was Rouner based?

17 A. He was US based.

18 Q. Did you work with -- we are going to
19 get into the details, but did you work with
20 Rouner on Formula One?

21 A. Not with Rouner, no.

22 Q. What position did Bonacker hold with
23 the company?

24 A. He was head of German investment
25 banking.

Dr. Thomas Marsoner - December 15, 2015

Page 22

1 MARSONER

2 Q. So he was based in Europe?

3 A. He was based in Frankfurt.

4 Q. I want to backtrack a little and
5 understand what have you done to prepare for the
6 deposition today.

7 A. I spent my entire life since age ten
8 on the subject matter is the honest answer.

9 Have I spoken to these two gentlemen
10 yesterday? Of course I have.

11 Q. Okay. Have you spoken to anybody else
12 about this deposition other than your lawyers?

13 A. No.

14 Q. I just want to confirm, have you
15 spoken to Pignatti?

16 A. After Pignatti's deposition I thanked
17 him for having taken the time.

18 Q. Did you ask Pignatti about the
19 deposition, what happened at his deposition?

20 A. No. No, I have read it.

21 Q. What about Magnoni, when is the last
22 time --

23 A. Exactly the same thing. After his
24 deposition I thanked him for it. I read it. No
25 further details were discussed with either.

Dr. Thomas Marsoner - December 15, 2015

Page 23

1 MARSONER

2 Q. Have you discussed this matter with
3 Tom Bernard?

4 A. Not in a very long time, not until
5 just before he sent the letter that he kindly
6 sent.

7 Q. Have you spoken since he sent the
8 letter?

9 A. No, I have not spoken to Tom Bernard
10 since he sent the letter.

11 Q. What about Christian Meissner, have
12 you discussed this matter with him?

13 A. I have discussed this matter with him
14 once when I got the e-mail that you recently
15 quoted from Peter Sherratt in which Peter
16 claimed that Christian Meissner agreed that I
17 had no claim. I was on the phone to Christian
18 the next day and asked him why he would say
19 that, to which he said: I didn't, I told him it
20 was before my time.

21 Q. Did Christian Meissner say anything
22 else than: That was before my time?

23 A. He told me in that conversation that
24 he had told him you are taking an in-house
25 lawyer along, there was a Linklaters person, it

Dr. Thomas Marsoner - December 15, 2015

Page 24

1 MARSONER

2 was a conference recall, and he -- Christian
3 told me that he told them he had nothing to add
4 on the Marsoner F1 matter because it was before
5 his time.

6 I then, for completeness sake, in
7 preparation of the US proceedings, I did contact
8 him again and asked Christian whether he would
9 be prepared to write a letter along the lines of
10 Marsoner F1 was before my time, and he responded
11 to that that the little draft I had prepared for
12 him -- Marsoner was before my time -- was
13 perfectly okay.

14 He replied in German to that, so he
15 had no problems with that text, but would I
16 please understand he now is head of global
17 corporate and investment banking at Bank of
18 America, Merrill Lynch. Huge job. Last
19 distraction he needs is to be deposed, God
20 forbid, publicly portrayed as involved in
21 litigation concerning Lehman. And I obviously
22 respected his wish not to be bothered.

23 Q. Okay. Have you spoken to him about
24 this matter since then?

25 A. No.

Dr. Thomas Marsoner - December 15, 2015

Page 25

1 MARSONER

2 Q. Have you spoken to Peter Sherratt
3 about this matter?

4 A. I attended, as you will recall, his
5 deposition. My communication with him
6 beforehand you have, and on the way out
7 exchanged one or two civilized words.

8 Q. What about any phone calls with Peter
9 Sherratt?

10 A. No.

11 Q. Have you discussed this matter with
12 Jeremy Isaacs?

13 A. I once went to see Jeremy around this.
14 This was, I believe, still around the UK
15 proceedings when I had come across my e-mail to
16 Jeremy Isaacs thanking him for the coffee and
17 telling him that the most significant thing I
18 had done for him was F1.

19 So I thought that I'd go see him with
20 my little evidence book, told him my story. He
21 hummed, you hawed, he told me he would take a
22 look at the book and I have never heard from him
23 since. And I respected his request for privacy
24 as well.

25 Q. Had you filed a claim in the UK

Dr. Thomas Marsoner - December 15, 2015

Page 26

1 MARSONER

2 proceedings by that point?

3 A. Honestly I do not recall whether it
4 was before or after. I would assume that I had
5 gone to see him before I filed the UK claim but
6 that I'm not sure about.

7 Q. Okay. Did Jeremy Isaacs know that you
8 expected to be paid by Lehman Brothers Europe at
9 that time?

10 A. You have the e-mail. With that e-mail
11 it was my full intention to prepare the ground
12 for a later claim. I prepared that ground not
13 only with him but also with Bonacker and also
14 with Dick Fuld in August of '08, but that's all
15 I did.

16 It was well understood, it's
17 understanding, by many at Lehman at that time
18 that I was going to make a claim around that.

19 Q. It was well understood by Jeremy
20 Isaacs?

21 A. It was well understood by a whole
22 number of people at Lehman that I would make a
23 claim. That is why I attached to my thank you
24 e-mail to Jeremy Isaacs what I think is the
25 salient exchange with Tom Bernard.

Dr. Thomas Marsoner - December 15, 2015

Page 27

1 MARSONER

2 Q. Did Jeremy Isaacs know that you were
3 going to assert a claim against Lehman Brothers
4 Holdings Inc. or Lehman Commercial Paper Inc.?

5 A. The way Lehman worked, the way the
6 living Lehman worked, individual legal entities
7 were not considered material. He certainly
8 understood that I was going to make a claim
9 against Lehman.

10 Q. At that point you had informed him
11 that you were asserting a claim in the UK
12 proceedings, correct?

13 MR. VAN TOL: Object to the form, lack
14 of foundation.

15 A. I told you, I'm sorry, I do not have
16 that time line clear in my head. I do not know
17 whether, when I went to see Jeremy with my
18 little evidence book, whether I had already
19 filed the UK proceedings or I had not. I
20 suspect I had not because, as I think about it,
21 it was just an evidence book.

22 I'm not -- I'm not sure about the
23 timeline.

24 Q. Okay.

25 A. But we can actually look it up because

Dr. Thomas Marsoner - December 15, 2015

Page 28

1 MARSONER

2 I think I have one copy of my UK evidence book,
3 and if it includes the claim then it was after.
4 I think it does not but I'm not certain.

5 Q. We'll go through -- this is just
6 introduction, but we'll go through e-mails and
7 documents that could refresh your recollection.

8 A. Sure.

9 Q. Had you discussed this matter with
10 Steve Hannan?

11 A. I do not know him.

12 Q. Is there anyone else that I haven't
13 covered with whom you've discussed this matter
14 other than your attorneys?

15 A. I think you've -- I certainly can't
16 remember anybody right now.

17 Q. Did you review any documents to
18 prepare for this deposition?

19 A. I certainly reread the US claim and
20 its attachments as well as the letters that were
21 written in support of my claim.

22 Q. Did you review any other documents to
23 prepare for this deposition?

24 MR. VAN TOL: Objection. That's a yes
25 or no answer.

Dr. Thomas Marsoner - December 15, 2015

Page 29

1 MARSONER

2 A. Yes, I did flip through the old UK
3 evidence book, the one that I showed Mr. Isaacs.

4 Q. What other documents did you review to
5 prepare for this deposition?

6 MR. VAN TOL: Object to the form.
7 You haven't established foundation for
8 asking which particular documents he looked at.

9 Q. You can answer.

10 A. I do not remember --

11 MR. VAN TOL: Don't --

12 THE WITNESS: Oh, sorry.

13 MR. VAN TOL: That's privileged until
14 they establish foundation.

15 BY MS. ALVAREZ:

16 Q. Did you review any other documents to
17 prepare for this deposition?

18 MR. VAN TOL: Yes or no, please.
19 Answer only yes or no, please.

20 A. Did I review documents to prepare for
21 this deposition? The answer is yes.

22 Q. What other documents did you review?

23 MR. VAN TOL: Object to the form.

24 To the extent you are asking for the
25 particular documents, you haven't established a

Dr. Thomas Marsoner - December 15, 2015

Page 30

1 MARSONER

2 foundation yet. That's privileged information.

3 MS. ALVAREZ: To the extent he
4 reviewed documents in preparation for this
5 deposition, we are entitled to know what he
6 reviewed.

7 MR. VAN TOL: That's correct, if you
8 can establish that it refreshed his
9 recollection. That's the test. You haven't
10 established that.

11 BY MS. ALVAREZ:

12 Q. Do you remember reviewing documents in
13 preparation for this deposition?

14 A. I just told you what documents I had
15 reviewed. I remember reviewing those.

16 Q. Okay. Are there any other documents
17 you remember reviewing?

18 A. I do not remember any other documents.

19 Q. Let's talk a little bit about Formula
20 One.

21 Please tell us how you came to work
22 on -- start from the beginning -- how you came
23 to work on Lehman's Formula One investment?

24 A. The origin of the Lehman Formula One
25 contact was when Ruggero Magnoni, Johann Ruppert

Dr. Thomas Marsoner - December 15, 2015

Page 31

1 MARSONER

2 and I went, at my suggestion, to the Monte Carlo
3 Grand Prix in 1998. I was still a full time
4 employee of Lehman at the time. This was the
5 time when the various Bernie Ecclestone
6 stratagems first became public.

7 So I suggested to a number of the
8 senior people at Lehman that this was likely
9 going to grow into a business opportunity for
10 Lehman. Ruggero is a close friend of Johann
11 Ruppert. Johann Ruppert owned a company called
12 Rothman at the time. Rothman sponsored the
13 Williams team, and Johann Ruppert and Ruggero
14 Magnoni had long planned to attend a Grand Prix
15 together, so we went there together which is
16 when Ruggero first met Bernie Ecclestone. I had
17 met Bernie before. And that is the moment when
18 it all started.

19 Q. How did that moment lead to Lehman's
20 investment in Formula One?

21 A. There were a whole number of different
22 transactions contemplated in various ways.
23 Ultimately Lehman financed Leo Kirch, the TV
24 rights entrepreneur and sports rights
25 entrepreneur, in his acquisition of 75 percent

Dr. Thomas Marsoner - December 15, 2015

Page 32

1 MARSONER

2 of the -- call it the Bernie Ecclestone company.

3 Lehman underwrote \$300 million of the
4 \$1.6 billion loan. JPMorgan underwrote the
5 other 300, and Bayerische Landesbank, the house
6 bank of Mr. Kirch, underwrote a billion.

7 Relatively soon after that loan was
8 given, Mr. Kirch's business went bankrupt and
9 Lehman managed to enforce the collateral and
10 took delivery at the time of the 17 percent
11 stake in Formula One. This is about 2002.

12 Q. What was your role in that financing
13 to Kirch?

14 A. Luckily for me, none, for the simple
15 reason that I had been asked what I thought of
16 Mr. Kirch and I truthfully responded that all my
17 German banking clients and friends had a very
18 low opinion of Mr. Kirch.

19 So I had no involvement whatsoever in
20 the loan itself, which is probably one of the
21 reasons why, when the loan had gone belly up, I
22 got the call, in that case it was Pignatti, who
23 used the words: Thomas, we're thinking about
24 intensifying our relationship with you again.

25 I had done as an advisor already, I

Dr. Thomas Marsoner - December 15, 2015

Page 33

1 MARSONER

2 had done one or two things that they liked. And
3 so Pignatti called me in and told me that they
4 had the idea that they needed somebody who knew
5 the space, who didn't scare easily, to help them
6 and JPMorgan in their dealings with Bernie
7 Ecclestone who they found incredibly difficult
8 to work with.

9 Q. Did Pignatti explain to you how long
10 they would need your assistance?

11 A. That was planned to be several years.
12 Essentially the plan was to help them get as
13 much money out of the stake they had gotten into
14 involuntarily as I could, and that was going to,
15 obviously visible at the time, be a multiyear
16 project.

17 Q. At this time were payment terms
18 discussed for your assistance?

19 A. That did not quite happen at that time
20 because the first thing that needed to be
21 discussed was whether JPMorgan would share the
22 view of the Lehman people that I would be useful
23 in this context.

24 So this was an in principle
25 discussion. Obviously it was not going to be a

Dr. Thomas Marsoner - December 15, 2015

Page 34

1 MARSONER

2 pro bono assignment but a serious assignment,
3 also a time commitment, so exposure.

4 Then I went to see a few gentlemen at
5 JPMorgan, Rick Gildea particularly comes to
6 mind, with whom I had from my point of view
7 perfectly decent discussions.

8 As you see from the e-mails I wrote at
9 the time, my own sort of concern was that more
10 than one of them asked me whether I was not too
11 close to Lehman to be able to represent both US
12 houses in this case which was -- which in truth
13 was not a completely stupid concern to have.
14 But other than that, they were very -- very,
15 very friendly discussions.

16 Next I heard was that Pignatti again
17 called me into his office and told me that
18 JPMorgan had decided not to avail themselves of
19 my services but to put their own "Rolls Royce
20 team" on to this assignment and would I please
21 help Lehman.

22 MS. ALVAREZ: Okay. I want to look at
23 a few documents from that time period. We can
24 take a look at the first exhibit. It's Lehman
25 415 is the Bates stamp.

Dr. Thomas Marsoner - December 15, 2015

Page 35

1 MARSONER

2 (Marsoner Exhibit 1, Single-page
3 e-mail from Thomas Bernard to Vittorio Pignatti
4 and others, dated Thursday, October 3, 2002,
5 Bates stamped LEH_0000415, marked for
6 identification)

7 BY MS. ALVAREZ:

8 Q. Dr. Marsoner, I would like you to look
9 at what's been marked Exhibit 1. It is an
10 e-mail from Thomas Bernard to Vittorio Pignatti,
11 Peter Sherratt, Steve Hannan, and it's dated
12 October 3rd, 2002.

13 Do you see that?

14 A. Hm-hmm.

15 Q. We talked a little bit about these
16 individuals, but let's clarify a little.

17 Who is Tom Bernard?

18 A. Tom Bernard I have known for a long
19 time. He was a teacher in my Salomon training
20 class in 1985 when Michael Lewis called him the
21 human piranha. So he is still famous for that.
22 Actually loves that.

23 Q. What was his role in F1?

24 A. He was originally or at the time the
25 head of our global credit businesses, and when

Dr. Thomas Marsoner - December 15, 2015

Page 36

1 MARSONER

2 the Kirch loan became a workout situation, Dick
3 Fuld, I think through Jeff Vanderbeek, asked Tom
4 Bernard to run the workout.

5 Q. Where was he based?

6 A. New York. New York, if not Aspen,
7 Colorado. Certainly US-based.

8 Q. What was -- we talked a little about
9 Pignatti. What was his title, do you know?

10 A. He was at the time head of European
11 M&A.

12 Q. What was his -- we've already talked
13 about his role in F1, we'll get into more detail
14 in a minute.

15 And Peter Sherratt, who was he?

16 A. He was counsel, he was in-house
17 counsel to Lehman in Europe.

18 Q. What was his role in F1?

19 A. He was the lawyer. There were -- the
20 original corporate governance was that Bernie
21 Ecclestone ran F1 with his 25 percent against 75
22 percent minorities of the three banks.

23 So the very first thing they had to do
24 him was sue him in Jersey which Peter was
25 involved in and Vittorio -- to get something

Dr. Thomas Marsoner - December 15, 2015

Page 37

1 MARSONER

2 approaching normal governance into the F1
3 situation. Peter was critical around all that.

4 Q. I know you said you didn't know Steve
5 Hannan, but do you know what his role was in F1?

6 A. I have since learned, but this is
7 relatively recent, that he was the first guy
8 that Lehman hired to become a professional
9 workout person of bad loans.

10 Lehman wasn't much in the lending
11 business then, so it didn't have many bad loans.
12 And when they started accumulating bad loans,
13 apparently they hired Steve Hannan to help them
14 work those loans out.

15 Q. Do you know where Steve Hannon was
16 based?

17 A. New York, I believe, but as I said I
18 do not believe I've ever met him.

19 Q. Let's look at the text of this e-mail.

20 Here Tom Bernard is actually
21 forwarding an e-mail originally sent by Vittorio
22 Pignatti on October 3rd, 2002, and Pignatti
23 stated in the e-mail: Spoke with Thomas
24 Marsoner who is in principle interested and
25 ready to hear more. He is available in person

Dr. Thomas Marsoner - December 15, 2015

Page 38

1 MARSONER

2 on Monday afternoon in London. Let me know how
3 you want to proceed.

4 Now, I recognize you are not copied on
5 this e-mail chain, but do you know what
6 conversation Pignatti was referring to?

7 A. Yeah, that was the one when he called
8 me in and said: We would like to intensify the
9 relationship, would you be able to help us on
10 F1?

11 Q. Was this an in-person conversation?

12 A. This was an in-person conversation,
13 yes.

14 Q. Was anyone -- anyone else there?

15 A. No.

16 Q. At this point I believe you testified
17 compensation terms weren't discussed?

18 A. No.

19 Q. Then this e-mail also refers to a
20 meeting possibly Monday afternoon in London.

21 Did that meeting take place?

22 A. I only recall telephoning
23 conversations with Tom Bernard at the time.

24 Q. Was anyone else on the phone other
25 than Tom Bernard?

Dr. Thomas Marsoner - December 15, 2015

Page 39

1 MARSONER

2 A. The conversations that I remember
3 having with Tom were always just Tom and I.

4 Q. What was discussed with Tom?

5 A. It was essentially him satisfying
6 himself that what he had heard from Pignatti,
7 which is Marsoner knows the space, was true. So
8 I gave him the lay of the land in F1 as I saw it
9 at the time.

10 Q. At this point was compensation
11 discussed?

12 A. Again, there was no reason to discuss
13 compensation. I had my relationship with
14 Lehman, that was a paid advisory relationship,
15 and this was not a situation where one would
16 need to discuss compensation.

17 Q. When you say you had a paid advisory
18 relationship with Lehman, are you referring to
19 the consultancy agreements?

20 A. Yes, of course.

21 Q. None of those consultancy
22 agreements --

23 MR. VAN TOL: I think --

24 A. Sorry, may I please finish?

25 Q. Did I cut you off? I'm sorry, go

Dr. Thomas Marsoner - December 15, 2015

Page 40

1 MARSONER

2 ahead.

3 A. Yes, of course I refer to the
4 consultancy agreements, but what I really refer
5 to is the whole seven-year period during which I
6 worked seamlessly as a senior advisor to Lehman.

7 Since those were seven years and there
8 were only five consultancy agreements that only
9 ever had the span of one year, there were a
10 whole number of periods in which technically the
11 formal consultancy agreement was not in force.
12 It had expired or whatever.

13 Nothing changed in my dealings with
14 Lehman during the period when those did not
15 exist. The way it worked was with the rules of
16 the old agreement were carried forward until
17 such time as a new agreement was signed.

18 So this was a seamless seven-year
19 advisory relationship on a for-fees basis.

20 Q. Those consultancy agreements
21 identified which transactions you would be
22 assisting Lehman with, correct?

23 A. They identified some but by far not
24 all.

25 Q. We're going to go through those

Dr. Thomas Marsoner - December 15, 2015

Page 41

1 MARSONER

2 consultancy agreements as well, and when we go
3 through them I'd like to go through what
4 transactions are not covered by those
5 agreements.

6 MS. ALVAREZ: So let's take a look at
7 what we'll mark as Exhibit 2. What we are
8 marking as Exhibit 2 is labeled Lehman 225 on
9 the bottom right-hand corner.

10 If you take a look at it, it is an
11 e-mail from Denise Callas to Tom Bernard dated
12 October 7, 2002, and the subject line reads:
13 Conference call between yourself, Peter Sherratt
14 and Thomas Marsoner.

15 (Marsoner Exhibit 2, Single-page
16 e-mail from Denise Calus to Thomas Bernard,
17 dated Monday, October 7, 2002, Bates stamped
18 LEH_0000225, marked for identification)

19 BY MS. ALVAREZ:

20 Q. Who is Denise Callas?

21 A. I do not know her. I assume reading
22 the e-mail she is the assistant to Peter
23 Sherratt. Do not remember ever meeting her.

24 Q. Now, the text of the e-mail reads:

25 Tom, Peter has asked me to organize the above

Dr. Thomas Marsoner - December 15, 2015

Page 42

1 MARSONER

2 conference call. Thomas Marsoner is only
3 available this afternoon London time and no
4 other time this week. Would you have any time
5 available today?

6 Then he just -- he goes through trying
7 to schedule this call.

8 Do you know what this call was about?

9 A. I cannot pinpoint what this call
10 exactly was about. I assume from the date that
11 it was the follow-on to the first one.

12 My recollection before I went to see
13 the JPMorgan people, I had one relatively
14 detailed telephone conversation with Tom
15 Bernard. I do not remember Peter Sherratt
16 having been on that call, but I can't rule it
17 out either.

18 Q. Is this the call that you described
19 for me a few minutes ago?

20 A. Yes.

21 Q. Did you have any other calls with Tom
22 Bernard?

23 A. No, there was one detailed one and
24 then, as I recall it, then I went to see the
25 JPMorgan people.

Dr. Thomas Marsoner - December 15, 2015

Page 43

1 MARSONER

2 Q. Okay.

3 MS. ALVAREZ: So let's mark the next
4 exhibit.

5 This e-mail is Bates stamped Lehman
6 412. This exhibit, Exhibit 3, is marked Lehman
7 412 on the bottom right-hand side. It is an
8 e-mail from Tom Bernard dated October 8th, 2002,
9 and it is to Vittorio Pignatti, Peter Sherratt
10 and Steve Hannan.

11 (Marsoner Exhibit 3, Single-page
12 e-mail from Thomas Bernard to Vittorio Pignatti
13 and others, dated Tuesday, October 8, 2002,
14 Bates stamped LEH_0000412, marked for
15 identification)

16 BY MS. ALVAREZ:

17 Q. Now, you are not copied on this
18 e-mail, Dr. Marsoner. Let's look at the text.

19 The first line reads: Spoke to Jeff
20 V. about retaining Marsoner. With numerous
21 caveats, told him we were thinking 200 million
22 salary plus a success fee of 250 million plus 2
23 percent of recovery above 225 million.

24 Do you see that?

25 A. I see that. I would have accepted

Dr. Thomas Marsoner - December 15, 2015

Page 44

1 MARSONER

2 that in a flash.

3 MR. VAN TOL: I would, too.

4 A. It's 200,000.

5 Q. Oh, it's 200,000. Okay.

6 Who is Jeff V., do you know?

7 A. Jeff Vanderbeek.

8 Q. Who is Jeff Vanderbeek?

9 A. It could have been chief of staff to
10 Dick Fuld or something like that, very senior
11 role at corporate in New York, or could have
12 been head of global fixed income. There were
13 others more qualified than me in the room.

14 Q. Was this offer ever made to you, the
15 200,000 salary?

16 A. No, the first time I saw this was when
17 I saw this e-mail in discovery.

18 Q. Were any compensation terms discussed
19 with you with regard to the possible joint
20 retention by JPMorgan at Lehman Brothers?

21 A. No.

22 MR. VAN TOL: Ms. Alvarez, we have
23 been going about 55 minutes, so at a convenient
24 time it would be great to have a break.

25 MS. ALVAREZ: Yeah, this would

Dr. Thomas Marsoner - December 15, 2015

Page 45

1 MARSONER

2 actually be okay to take a break now.

3 THE VIDEOGRAPHER: The time is 10:37

4 a.m. and we are going off the record.

5 (Recess)

6 THE VIDEOGRAPHER: This begins media

7 unit number two. The time is 10:49 a.m. and we

8 are back on the record.

9 BY MS. ALVAREZ:

10 Q. Okay, Dr. Marsoner. I'd like to talk
11 to you a little bit more about your role in
12 Lehman's Formula One investment.

13 I want to divide it up by time period.
14 So between -- before 2005, between 2002 and
15 2004, what was your role on Formula One for
16 Lehman?

17 A. At Vittorio Pignatti's request, I
18 watched the space very carefully, and when I saw
19 either a pitfall for Lehman or an opportunity, I
20 would either call Pignatti or send him an
21 e-mail. I think some thirty of those e-mails
22 have been dug out that I have sent to him,
23 sometimes copying Sherratt over the time period
24 between JPMorgan passing on my help and the
25 critical realization and exchange with Tom

Dr. Thomas Marsoner - December 15, 2015

Page 46

1 MARSONER

2 Bernard. So I was, in my self-perception,
3 working on this very regularly.

4 Q. How often would you speak to Pignatti
5 about Formula One?

6 A. Depends on -- depends on whether there
7 was anything urgent going on. When there was a
8 development that looked like it was either an
9 opportunity or a threat, could have been, you
10 know, on a weekly basis. During quiet periods I
11 might not have spoken to him about it for
12 months.

13 Q. You mentioned that you copied Peter
14 Sherratt on some of the e-mails.

15 A. Yeah.

16 Q. Did you speak to Peter Sherratt about
17 Formula One?

18 A. If at all, then very little. The
19 reason he was, my perception, involved in those
20 years is because there were so many little legal
21 pitfalls in the governance structure of F1. So
22 that for the banks just to go somewhere close to
23 exercising the 75 percent voting power that they
24 had, required very heavy duty legal lifting, and
25 there Sherratt was very involved and very good

Dr. Thomas Marsoner - December 15, 2015

Page 47

1 MARSONER

2 and very successful.

3 Q. Other than Pignatti and Sherratt, were
4 you in touch with anyone else at Lehman
5 regarding Formula One during this time period?

6 A. Yes, Magnoni to a much lesser degree.

7 Q. Anyone else?

8 A. No. I certainly can't recall anybody
9 else at this stage.

10 Q. Did you participate in any meetings
11 regarding Formula One during this time period?

12 A. Beyond the group that I mentioned,
13 which was primarily Pignatti and Magnoni with
14 whom I would meet periodically, and certainly in
15 those years I cannot recall a single meeting
16 with any of them where Formula One did not come
17 up, also because they had things to share with
18 me that I wasn't so privy to. The whole Ferrari
19 relationship was one where they were closer than
20 I was. So we certainly compared notes.

21 Q. Now, Pignatti was based in Europe,
22 correct?

23 A. Yes.

24 Q. So was Magnoni?

25 A. Yes.

Dr. Thomas Marsoner - December 15, 2015

Page 48

1 MARSONER

2 Q. And Peter Sherratt was based in
3 Europe?

4 A. Yes. But Magnoni and Pignatti were
5 also officers of LBHI.

6 Q. How do you know that?

7 A. Because I read it in the annual report
8 of LBHI, and because they were very proud of
9 those titles.

10 Q. During this time period was there a
11 dedicated F1 team at Lehman?

12 A. I do not know exactly at what point in
13 time the Patricks, who were relatively junior
14 bankers at the time, that is, Patrick
15 Schmitz-Morkramer and Patrick Bierbaum, got
16 involved. Since I now have seen that it was
17 actually Patrick Bierbaum who wrote the job
18 description of mine that they were submitting to
19 JPMorgan, I assume that they were involved at
20 the time.

21 I certainly think highly of them, and
22 I have certainly interacted with Patrick,
23 Schmitz-Morkramer, that is, on a number of
24 issues, but their role was a data gathering and
25 data analysis role. Theirs was not a strategic

Dr. Thomas Marsoner - December 15, 2015

Page 49

1 MARSONER

2 role.

3 Q. Do you know where Patrick Bierbaum was
4 based?

5 A. In London, I believe, if not in
6 Frankfurt. I do not know. With him I did not
7 interact. Schmitz-Morkramer was originally in
8 London and then in Frankfurt.

9 Q. Okay. So now let's take us to the
10 2005 time period.

11 What was your role in F1 from 2005
12 forward?

13 A. In 2005 after a number of not so happy
14 occurrences for the banks, including, which is
15 important here, a complete break down in their
16 discussions with both the teams and Ecclestone
17 in '04, there certainly surfaced first the rumor
18 and then the announcement that CVC had reached
19 agreement with Bayerische Landesbank to buy
20 Bayerische Landesbank's stake in F1.

21 That was huge news because the whole
22 crux of the issue was the longevity of the
23 franchise. Everybody always knew that F1 was
24 highly profitable year in, year out, but the big
25 risk that everybody saw was that this party

Dr. Thomas Marsoner - December 15, 2015

Page 50

1 MARSONER

2 could end at any year end, really. And when I
3 picked up that CVC was going to buy, I picked up
4 at the same time through my Austrian racing
5 connections that Ron Dennis of McLaren was fully
6 supportive of the CVC deal.

7 That was a financially, strategically
8 truly huge development, as Tom Bernard put it,
9 because if you looked at the world championships
10 for the 20 years leading up to 2005, about
11 two-thirds of them were either Ferrari victories
12 or McLaren victories. So Ferrari versus McLaren
13 was the race.

14 In the Ecclestone years, when
15 Ecclestone was essentially fighting the banks
16 from '02 to '05 after the breakdown in '04,
17 Ecclestone essentially bought off Ferrari. He
18 knew Ferrari was the team. Without Ferrari,
19 very difficult to run a championship. He
20 essentially cut them an annual check for \$50
21 million, which remained secret at the time, but
22 with that cash payment he broke Ferrari out of
23 the GPWC consortium. So the senior team in the
24 GPWC consortium was McLaren.

25 The moment it became clear that

Dr. Thomas Marsoner - December 15, 2015

Page 51

1 MARSONER

2 McLaren was supportive of CVC, the big value
3 impact in Formula One had gone away
4 automatically. What used to be -- what used to
5 be an annual circus had suddenly become a
6 multiyear circus with corresponding tremendous
7 uplift in value.

8 That was my -- I was the first to call
9 that, certainly at Lehman, and that was my major
10 contribution.

11 Q. How did you learn that McLaren was
12 supportive of CVC?

13 A. Originally from the Austrian circles.
14 More specifically it was something like Ron
15 Dennis telling Nicky Lauder telling my uncle
16 telling me. That was essentially my -- my
17 unique access to nonpublic information.

18 In addition to that, through my
19 watching brief on this for a number of years, I
20 knew fairly precisely which of the racing
21 journalists in which papers had good information
22 and which ones had bad information. So I could
23 triangulate quite well.

24 Q. One thing you said a couple minutes
25 ago was that F1 was a big risk -- that it was a

Dr. Thomas Marsoner - December 15, 2015

Page 52

1 MARSONER

2 big risk and everyone saw it as a big risk?

3 A. Yeah, up to that moment, yes.

4 Q. I'm just focusing on the word

5 "everyone" because I want to understand who are
6 you referring to when you said everyone.

7 A. Everybody involved with an idea of
8 what was going on. Goldman Sachs were advising
9 GPWC. Purely technically they had the
10 wherewithal and the financial resources to set
11 up a separate series. Separate series happened
12 all the time in motor sport. In the US it is
13 split between Indy and NASCAR. In boxing there
14 are competing series. It is very useful and
15 very value accretive for a global sport to be
16 essentially a monopoly, and the risk of split is
17 very real at all times. And in those years, the
18 risk of split for F1 was very, very real.

19 Q. You mentioned earlier that Tom Bernard
20 was heading out -- heading up the workout team
21 at Lehman?

22 A. Yeah.

23 Q. Who else was on that team?

24 A. My perception was that Tom Bernard was
25 the man.

Dr. Thomas Marsoner - December 15, 2015

Page 53

1 MARSONER

2 Q. Did you know if there was anyone else
3 on that team?

4 A. I have since, you know, I have since
5 heard, of course, of Steve Hannan who I did not
6 know at the time. I certainly knew that Peter
7 Sherratt was involved as a lawyer. And in my
8 perception, certainly through the end of my
9 discussions with Bernard in '05, Vittorio
10 Pignatti was also fully involved.

11 Q. And Pignatti was your main contact?

12 A. Pignatti was the main contact, yes.

13 Q. Did you ever communicate with Tom
14 Bernard, other than the telephone calls we
15 talked about earlier, did you ever communicate
16 with Tom Bernard separately from Pignatti?

17 MR. VAN TOL: Object to the form.
18 It's vague as to time.

19 Q. I'm really talking about this 2005
20 forward time period.

21 A. We all have the salient e-mail
22 exchange which starts me briefing Pignatti,
23 copying Sherratt. And when I then realized that
24 I really had critical, urgent, huge, as Bernard
25 calls it, information, I sent the e-mail

Dr. Thomas Marsoner - December 15, 2015

Page 54

1 MARSONER

2 directly to Bernard. And if you go through that
3 exchange you'll see that at the end he asks me
4 for my number again, and we then spoke on the
5 phone a couple of times also.

6 Q. What did you discuss on the phone?

7 A. Very much the detail to where I -- how
8 certain was I of my sources, which by then was a
9 no-brainer because by then the McLaren statement
10 had become public, how the risk analysis would
11 work. If you look at the e-mail you'll see that
12 Tom Bernard found the spelling of McLaren
13 somewhat challenging.

14 If you'll allow me, it's a little bit
15 like putting Europeans in charge of a baseball
16 organization. Americans and F1 is not a natural
17 fit. If you look at my e-mail with Tom Bernard,
18 for example, it asked me why would CVC be so
19 welcome. My response was that they have done
20 such a good job running Moto GP, the motorbike
21 racing series. So he asked me whether Mercedes
22 was racing motorbikes.

23 So between his spelling of McLaren and
24 whether Mercedes was a motorbike manufacturer,
25 there was a relatively large amount of factual

Dr. Thomas Marsoner - December 15, 2015

Page 55

1 MARSONER

2 F1 racing knowledge that he at that time had a
3 curiosity for where I was in a position to fill
4 the gaps in his knowledge.

5 So it was very much a, you know, a --
6 an invited significant knowledge and knowhow
7 transfer from me to him. And he reacted very
8 positively. He was very, very grateful and, as
9 he also wrote, he accepted my advice.

10 Q. When you spoke to him on the phone,
11 did he tell you whether Lehman had decided to
12 sell its stake in F1?

13 A. The words he mentioned to me that
14 stuck in my mind are words like: Thank you
15 very, very much, that's very, very, very useful,
16 inclined to follow your advice but we are still
17 in discovery mode.

18 He did not have the offer from CVC at
19 that time.

20 Q. You said he said Lehman was still in
21 discovery mode?

22 A. Yes.

23 Q. So they were deciding -- they were
24 still considering what to do?

25 A. They were absolutely going to make

Dr. Thomas Marsoner - December 15, 2015

Page 56

1 MARSONER

2 their ultimate decision once the -- once the bid
3 was on the table which, of course, it wasn't
4 when I briefed him.

5 Q. Did Bernard tell you whether anyone at
6 Lehman was advising Lehman to sell its stake in
7 F1?

8 A. I do not know if it was Bernard, but I
9 was told at the time that the CVC coverage
10 banker, trying to do CVC a favor, was very much
11 in favor of selling to CVC. CVC was a very
12 important client of the firm, so doing CVC a
13 favor was certainly something that was popular
14 with those who made their living off of the CVC
15 relationship.

16 Q. Who told you that?

17 A. I believe it was Pignatti but I'm not
18 sure.

19 Q. Do you know if Pignatti was advising
20 Lehman to sell its stake?

21 A. Pignatti was fully aligned with me.

22 Q. Do you know whether Pignatti ever
23 informed anyone at Lehman that they should --
24 that it was his opinion that Lehman --

25 A. I'd be surprised if he had been.

Dr. Thomas Marsoner - December 15, 2015

Page 57

1 MARSONER

2 Q. -- should sell it's stake?

3 You'd be very surprised -- I'm sorry?

4 A. I would be very surprised if Pignatti
5 had advised Lehman to sell. The -- the
6 financial impact of this coordination with
7 McLaren was huge. You have a one or two-year
8 cash flow expectation of significant cash flows
9 that suddenly becomes, given that they are now
10 all in on it, a certainly seven, but probably 14
11 or 21-year proposition.

12 At that moment the value of Formula
13 One multiplied then and there. That was my
14 call. Pignatti understood it for sure. Magnoni
15 understood it for sure. Bernard understood it.
16 I had heard that there was opposition to it, but
17 it was mathematically so compelling that what
18 could have got wrong is if I hadn't gotten my
19 advice in immediately and if the CVC offer had
20 shown up first, there is a risk that some people
21 trying to curry favors with CVC would have said
22 nice things to CVC that the firm might have then
23 found difficult to retract.

24 Q. At the point that you were providing
25 this advice, did you discuss with anyone the

Dr. Thomas Marsoner - December 15, 2015

Page 58

1 MARSONER

2 possibility of being compensated for it?

3 A. I didn't have to. I was a paid
4 advisor. Terms were very clear.

5 Q. Because of the advisory services
6 agreements?

7 A. Yeah, absolutely, the 10 percent of
8 firm revenues had been set in stone from the
9 outset, and as the Cerberus BAWAG deal showed,
10 which was probably the second most important
11 thing I had done for Lehman, there was no
12 necessity to document that any further.

13 Q. So Lehman had agreed to pay you ten
14 percent of firm revenues for your advice in
15 Formula One?

16 A. Absolutely, for the simple reason that
17 those rules existed, were well understood by
18 everybody, and I was asked officially to help
19 out by one of the most senior people in Lehman
20 investment banking, Vittorio Pignatti. There
21 was nothing further that I needed to do or would
22 have actually been inclined to do.

23 Might Pignatti, in the way he
24 described it, have used the high negotiating
25 power that Lehman had to negotiate me down at

Dr. Thomas Marsoner - December 15, 2015

Page 59

1 MARSONER

2 some point in the future, he might well have.

3 Christian Meissner did not do that in BAWAG

4 Cerberus, and I'd like to sort of make it very

5 clear that while I am trying always to be very

6 constructive, the negotiation that would have

7 negotiated me down from the well established

8 general rule never took place, and a bankrupt

9 Lehman does not have the negotiating power that

10 the living Lehman would have had.

11 So the rules were in place. I was

12 officially asked to work on it. That is all

13 that matters.

14 Q. Where is this general rule that you
15 would be paid 10 percent documented?

16 MR. VAN TOL: Objection, asked and
17 answered. You can answer again.

18 A. Yeah. In every one of the agreements,
19 the specific one that was in force, the specific
20 one whose rules were in force at the time is the
21 '04 agreement. It says very clearly 20 percent
22 of the IBD fees, which in the case of M&A fees
23 means 20 percent of M&A fees, in the case of
24 financing fees it means 10 percent of firm
25 revenues, and in the case of holding gains, net

Dr. Thomas Marsoner - December 15, 2015

Page 60

1 MARSONER

2 of holding losses, it means 10 percent of those
3 net gains. The contract says that very, very
4 clearly.

5 MS. ALVAREZ: Why don't we take a look
6 at it?

7 (Marsoner Exhibit 4, Multipage
8 document bearing the heading Lehman Brothers,
9 dated 13th February 2004, addressed to Thomas
10 Marsoner, and bearing no Bates stamps, marked
11 for identification)

12 BY MS. ALVAREZ:

13 Q. So we have marked as Exhibit 4 the
14 letter agreement between Lehman Brothers Europe
15 Limited and Dr. Marsoner dated February 13,
16 2004.

17 This is the 2004 agreement that you
18 were just referring to?

19 A. I'm just looking at it.

20 (Pause)

21 Q. I'll represent this was attached as
22 Exhibit C to your motion as you can tell from
23 the header.

24 A. Sorry --

25 MR. VAN TOL: That was for us. Don't

Dr. Thomas Marsoner - December 15, 2015

Page 61

1 MARSONER

2 worry.

3 (Pause)

4 Q. I don't need you to look at the
5 provision now, I just want to make sure this is
6 the correct agreement.

7 A. Yes.

8 Q. And this agreement is dated February
9 13, 2004?

10 A. Correct.

11 Q. Then under the date I see your name
12 and an address?

13 A. Hm-hmm.

14 Q. What address is this?

15 A. This is the house of a friend of mine
16 in Malta where I stayed for a few days in that
17 time period, in the '04 time period. I have not
18 stayed since.

19 If I may digress, I'll tell you why
20 the first agreement had the Austrian address and
21 the last two had the Austrian address, but the
22 middle two had different addresses. It is
23 entirely UK tax driven. In the UK, perfectly
24 legally, for non-UK citizens would distinguish
25 between onshore income and offshore income.

Dr. Thomas Marsoner - December 15, 2015

Page 62

1 MARSONER

2 Q. Okay.

3 A. And it -- particularly in this time
4 period I did not want to have a cosmetic piece
5 of paper out there that suggested that I was --
6 that this income, which was classic legal
7 offshore income for UK purposes, was either
8 Austrian taxable or UK taxable. Has nothing to
9 do with the substance. This was just cosmetic.

10 Everybody at Lehman knew where to find
11 me, everybody at Lehman knew both my Austrian
12 domiciliary address and my London residency
13 address, and everybody at Lehman also knew that
14 this was tax cosmetics.

15 Q. When you say everybody at Lehman, you
16 are referring to your contacts on F1?

17 A. My contacts there, yes.

18 Q. So if you look at this agreement, it
19 is between Lehman Brothers Europe Limited and
20 you, correct?

21 A. I believe the whole Lehman Group is
22 encompassed by it, represented by Lehman
23 Brothers Europe Limited. You see in line 5 that
24 it says I will provide advice and assistance
25 also to other members of the Lehman Brothers

Dr. Thomas Marsoner - December 15, 2015

Page 63

1 MARSONER

2 group. So the way I have always looked at these
3 agreements was that I was advising all of Lehman
4 worldwide. Lehman Brothers Europe Limited was
5 the point of contact.

6 Q. And Lehman Brothers Europe Limited was
7 the signatory to the agreement, they actually
8 signed the agreement?

9 A. Europe Limited was indeed -- it was
10 the corporate finance advisory company, was
11 indeed the signatory on behalf of the Lehman
12 Group.

13 Q. Is that Pignatti's signature?

14 A. That is Pignatti's signature, yes.

15 Q. Were there any amendments to this
16 agreement?

17 A. Can you define the word "amendments"
18 for me so I understand it better?

19 Q. Sure. Were there ever any supplements
20 to this agreement negotiated and executed?

21 A. The way I look at it in substance, my
22 conversation, my e-mail conversation with Tom
23 Bernard was very much certainly in the spirit of
24 such an amendment: Inclined to take your
25 advice, accept your advice, while this is huge

Dr. Thomas Marsoner - December 15, 2015

Page 64

1 MARSONER

2 and all that.

3 Q. Other than that e-mail, was that --
4 you called it a spirit of an amendment -- ever
5 documented?

6 A. Other than in the e-mail it wasn't and
7 it didn't have to be.

8 Q. Let's look at the terms more
9 specifically of this agreement.
10 Let's look at Section 3 which is
11 entitled: Compensation Payable to the
12 Consultant.

13 Do you see that?

14 A. Yeah.

15 Q. Now, this Section 3 identifies the
16 compensation that you would be paid under this
17 agreement?

18 A. Hm-hmm.

19 Q. And Section 3(i) states that a fee of
20 150,000 pounds --

21 MR. VAN TOL: Euros.

22 Q. Euros would be paid to you?

23 A. I'm sorry -- yeah, I see that, yeah.

24 Q. Was that paid to you?

25 A. I believe so, yes.

Dr. Thomas Marsoner - December 15, 2015

Page 65

1 MARSONER

2 Q. Section 3(ii) identifies the quarterly
3 fees that you would be paid under the agreement?

4 A. Hm-hmm.

5 Q. Were those paid to you?

6 A. I believe so.

7 Q. Then if you look at Sections (iii) --
8 (iii) through almost the end of it, through
9 (viii), these provisions identify various
10 transactions that you were working on with
11 Lehman, correct?

12 A. That's correct, yes.

13 Q. And they identify how much you would
14 be paid by Lehman for each of the transactions?

15 A. Yes.

16 Q. Now, Formula One is not identified in
17 any of these paragraphs, correct?

18 A. It is not and it doesn't have to
19 because there is the catchall clause nine.

20 Q. So let's look at the catchall clause
21 nine. I'm just going to read it for the record:

22 In relation to any other agreed
23 transaction provided that A -- and it's a little
24 cut off so I'm doing my best here, correct me if
25 I state anything wrong -- (A) such transaction

Dr. Thomas Marsoner - December 15, 2015

Page 66

1 MARSONER

2 completes during the payment period and (B) the
3 consultant provides substantial services to
4 Lehman Brothers in relation to such agreed
5 transaction, Lehman Brothers shall pay the
6 consultant a -- I assume it would -- says fee
7 based on a to be agreed upon percentage of the
8 net banking revenues which are both earned and
9 received by Lehman Brothers.

10 Then the rest of this page is cut off.

11 Do you see that?

12 A. I see it, yes.

13 MR. VAN TOL: Just a correction. It
14 says: Net investment banking revenues.

15 MS. ALVAREZ: Okay.

16 Q. Do you have a copy of this agreement
17 that's not cut off?

18 A. I hope so. I did not have it in
19 London when you asked last week. I have these
20 in the file in Austria and when I find it you
21 will immediately get it.

22 DISCOVERY REQUEST

23

24 MS. ALVAREZ: We would call for the
25 production of the document.

Dr. Thomas Marsoner - December 15, 2015

Page 67

1 MARSONER

2 I'll tell you that a few of these --
3 this is not the only one that's cut off, some of
4 the other -- the 2002, I think, and the 2006 are
5 cut off as well, so if you can look for the
6 full, complete copies.

7 MR. VAN TOL: We'll make the same
8 request to you.

9 THE WITNESS: Yeah.

10 MR. VAN TOL: Not to you, we are
11 making the same request to Lehman for a copy of
12 its own agreement.

13 BY MS. ALVAREZ:

14 Q. Right here -- so it says: Lehman
15 Brothers shall pay the consultant a fee based on
16 a to be agreed upon percentage of the net
17 investment banking revenue.

18 Was a percentage agreed upon between
19 Lehman and you for F1?

20 A. The percentage, 10 percent of firm
21 revenues is the default percentage that has been
22 in force at all times during the consultancy
23 period. It didn't have to be specifically
24 agreed another time. It was the well understood
25 fee for which I provided my services.

Dr. Thomas Marsoner - December 15, 2015

Page 68

1 MARSONER

2 Q. Where does it state in this agreement
3 that 10 percent was the default fee that you
4 would be paid under the consultancy?

5 A. If you look at all the agreements, you
6 will find 20 percent of IBD fees everywhere,
7 including in this one and the prior ones.

8 Q. Well, point it out to me. Where does
9 it say that you would be paid 10 percent as the
10 default role?

11 A. I'm trying to point out to you that it
12 was the agreed percentage, and the best place
13 for you to see that is probably the Graham
14 Wilson e-mail to me at the end of BAWAG Cerberus
15 which is appended as an exhibit to our motion
16 here. That is also not specifically captioned
17 in any one paragraph here, but that reflects
18 exactly the rule I just told you: 20 percent of
19 M&A fees, 10 percent of financing fees, 10
20 percent of net holding gains.

21 Q. So the Graham Wilson e-mail would be
22 the best place to look, not the actual
23 agreement?

24 A. The Graham Wilson e-mail is the best
25 place to look how, even without a specific

Dr. Thomas Marsoner - December 15, 2015

Page 69

1 MARSONER

2 reference in any one of the five agreements,
3 Lehman Brothers very happily paid the
4 agreed-upon percentages in a relatively major
5 transaction when this was a hundred million fees
6 and -- to Lehman, and nearly ten to me, without
7 it having been captioned in any one of those
8 individual points in any one of the individual
9 agreements.

10 Q. Other than BAWAG which we'll talk
11 about, what other transactions have you been
12 paid for that are not covered by your advisory
13 services agreements?

14 A. That I do not currently know. There I
15 would have to go back to my banking records.
16 Certainly BAWAG was the only major one. There
17 may well have been smaller ones, but I do not
18 currently -- I do not currently know that
19 offhand. I certainly know that the two biggest,
20 F1 and BAWAG Cerberus, were not in any paragraph
21 of any individual formal document.

22 Q. Let's take a look at this paragraph 39
23 that we were just looking at, and it refers to
24 in relation to any other agreed transaction.

25 Do you see that?

Dr. Thomas Marsoner - December 15, 2015

Page 70

1 MARSONER

2 A. Hm-hmm.

3 Q. What would you consider -- well, let's
4 look at the definition of agreed transaction,
5 actually.

6 On the very next page do you see it
7 says: Agreed transaction means any transaction
8 which Lehman Brothers -- I assume that word is
9 "has" but correct me if I am wrong because it's
10 cut off -- has specifically designated in
11 writing to the consultant as falling within the
12 ambit of this agreement.

13 Do you see that?

14 A. Hm-hmm.

15 Q. And Formula One -- you have no
16 separate writing designating Formula One as an
17 agreed transaction, correct?

18 A. I consider my e-mail exchange with Tom
19 Bernard, that designation in writing. And I
20 certainly considered the formal oral request by
21 Pignatti to advise them on F1, mutually, in good
22 faith, as a very material matter, too.

23 Q. Now, Pignatti never agreed in an
24 e-mail to pay you 10 percent for your work on
25 Formula One, correct?

Dr. Thomas Marsoner - December 15, 2015

Page 71

1 MARSONER

2 A. Pignatti in a letter to the court
3 correctly compares it to my work for BAWAG
4 Cerberus which triggered the 10 percent.

5 Q. You know, that was not my question.

6 My question was, Pignatti never agreed
7 to pay you 10 percent in an e-mail, correct?

8 A. Pignatti never tried to negotiate the
9 usual 10 percent down. He didn't have to write
10 me an e-mail reconfirming them. They were
11 mutually usually agreed.

12 Q. So, then, there was no e-mail?

13 A. There was no e-mail by Pignatti trying
14 to negotiate me down, that is correct.

15 Q. Was there an e-mail from anyone at
16 Lehman agreeing to pay you 10 percent for your
17 services on F1?

18 A. There did not have to be an e-mail by
19 anybody. This was the well-established course
20 of dealings between Lehman and me.

21 Q. So no e-mail?

22 A. There was no e-mail negotiating me
23 down, absolutely not.

24 Q. And no advisory services agreement
25 identifying Formula One as a transaction for

Dr. Thomas Marsoner - December 15, 2015

Page 72

1 MARSONER

2 which you would be paid?

3 MR. VAN TOL: Object to the form.

4 You may answer.

5 A. Could you just rephrase that, please?

6 Q. Sure. Could you just repeat the
7 question so I can hear it?

8 (Question read)

9 A. There was, of course -- we all have
10 the documents -- no reference to Formula One
11 specifically in any one of these five. That
12 does not mean that Lehman did not ask me to
13 provide services at the usual generally agreed
14 terms.

15 Q. Okay. I understand that.

16 I just want to make sure -- are there
17 any other consultancy agreements that we don't
18 have?

19 A. There were these five.

20 Q. Were there any amendments or addendums
21 to any of these consultancy agreements?

22 A. I do not recall any amendments or
23 addendums, no.

24 Q. Did you ever ask that Formula One be
25 added to any one of these agreements?

Dr. Thomas Marsoner - December 15, 2015

Page 73

1 MARSONER

2 A. I never did because I never needed to.
3 All I did is prepare the ground for such time as
4 revenues would become visible, which it turns
5 out only happened in 2012.

6 Q. So between 2005 and 2012, you never
7 put down in writing -- put down in writing how
8 much you would be paid by Lehman Brothers for
9 your assistance on F1?

10 MR. VAN TOL: Object to the form.

11 You may answer.

12 A. What I did put down in one of the
13 e-mails to Bernard and Pignatti and so on was a
14 sentence to the fact of -- that my senior advice
15 would continue to be available at the usual
16 modest percentage, something along those lines.
17 But that was not the request, that was a
18 statement of fact.

19 My prepare-the-ground conversation
20 with Jeremy Isaacs in 2007 then led to a
21 conversation between Sherratt and me. As I came
22 out of the room he asked me:

23 How did your chat with Jeremy go,
24 Thomas?

25 I said: Very well. And by the way,

Dr. Thomas Marsoner - December 15, 2015

Page 74

1 MARSONER

2 the F1 thing that we both worked on looks pretty
3 good these days, doesn't it, Peter?

4 To which he said: Yes, but we've also
5 had very high costs here.

6 And I reflected on that a little bit,
7 actually in fairly great detail, and I ended up
8 agreeing with him, which you see in the way I
9 presented my claim: A living Lehman in reality
10 only got its 300 million that it originally
11 invested in Kirch, plus a little bit of money
12 for interest and costs back.

13 So as long as Lehman was alive, no
14 firm revenues that would have triggered a fee of
15 mine had actually occurred. My source for that
16 was Sherratt after the conversation with Isaacs
17 and I actually agree. In fairness Lehman had
18 put 300 in and got a little bit more than 300
19 out but hadn't actually earned any cash before
20 its bankruptcy.

21 Q. What about -- were you aware of the
22 refinancing that occurred in 2006?

23 A. That's exactly what I meant with the
24 312 million or whatever the number is that is in
25 my statement of claim.

Dr. Thomas Marsoner - December 15, 2015

Page 75

1 MARSONER

2 Q. So during -- as a result of the
3 refinancing, the shareholders were paid
4 dividends, correct?

5 A. The shareholders were paid dividends
6 and Lehman got its 300 million back. That's
7 right.

8 Q. At that point did Lehman provide you
9 any compensation for your work on F1?

10 A. I didn't ask for it. Lehman had only
11 gotten its money back, 300 in, a bit more than
12 300 out. It could be argued that after interest
13 Lehman was actually still in the hole on F1 as
14 it went bankrupt.

15 Q. At that point --

16 A. There was certainly no profit that
17 would have, in fairness, triggered my fee.

18 Q. At that point you didn't raise with
19 anyone at Lehman the possibility of getting any
20 of that?

21 MR. VAN TOL: Objection.

22 Mischaracterizes evidence.

23 You may answer.

24 A. I very much prepared the ground. You
25 have the Jeremy Isaacs e-mail. You now have --

Dr. Thomas Marsoner - December 15, 2015

Page 76

1 MARSONER

2 apologies, I had not searched for that
3 earlier -- the Bonacker e-mail. But the history
4 of the Bonacker e-mails, there are actually two,
5 was interesting.

6 Bonacker, who at one point complained
7 to me that young Schmitz-Markramer was running
8 around the firm taking victory laps for F1. So
9 I said -- and that was difficult for Bonacker,
10 so I sent Bonacker those two e-mails to -- with,
11 I think -- I mean, you have them -- words to the
12 effect of: Look who really deserves the credit
13 for F1.

14 And then ultimately in August 2008 I
15 went to see Dick Fuld in New York about --
16 originally came to pass, it's in disclosure,
17 that he kindly called me after the Cerberus
18 people had told me, that it was actually I who
19 had done the Cerberus BAWAG deal.

20 And so, longer story, he ultimately
21 invited to come see him in New York City in
22 August of 2008, of all time periods. That's one
23 of those meetings one doesn't easily forget. As
24 I walked into his office he hugged me. I have
25 been relatively close to Dick in the past, but

Dr. Thomas Marsoner - December 15, 2015

Page 77

1 MARSONER

2 we have not really been on hugging terms before.

3 We then discussed a number of things,
4 particularly with my financial institution's
5 hat. And ultimately he said: So what else have
6 you been up to?

7 To which I said: Oh, Dick, in
8 addition to the essentially hundred million that
9 I made you on BAWAG Cerberus and a few other
10 things, by far the most important thing that
11 I've done for you was your F1 investment.

12 To which he -- and I see it in front
13 of me -- used a -- an old fashioned thank you
14 gesture as one does in old movies, followed by:
15 Now, Thomas, you'll forgive me, I have another
16 50,000 things to do.

17 And I left his office. So that was
18 exactly three weeks before Lehman filed.

19 Q. And --

20 A. So -- so -- but I certainly -- also
21 then that was certainly the last prepare the
22 groundwork that I had done. It certainly would
23 not have occurred to me in any way to ask Dick
24 to pay me a fee, and the chief reason for that
25 was that no revenues were visible.

Dr. Thomas Marsoner - December 15, 2015

Page 78

1 MARSONER

2 It's in your discovery that the
3 Pignatti-Rouner e-mail says exactly at one -- at
4 what point we actually put pen to paper, so I
5 was working on a lot of things that -- on
6 nowhere here also because they never
7 materialized.

8 So if we had always captured
9 everything that I was working on in one of these
10 agreements, all we would have done is write
11 agreements and never done any real work.

12 Q. Other than BAWAG which we have talked
13 about and Formula One which we have talked
14 about, what other things were you working on
15 that never materialized that were not covered by
16 these agreements?

17 MR. VAN TOL: There is a lot of
18 negatives. I'm going to object to the form. I
19 don't understand the question.

20 If you understand you may answer.

21 A. I think I do understand the question.

22 Q. Okay.

23 A. And if I may, I would like to go back,
24 give you a list. There were a whole number of
25 things that one works on and that -- and where

Dr. Thomas Marsoner - December 15, 2015

Page 79

1 MARSONER

2 revenues never become visible, and then some die
3 and then there is no point in ever putting them
4 in.

5 In F1, revenues became visible for the
6 first time in 2012. In May 2012 and in August
7 2012 I made my claim to my contractual
8 counterpart LBEL.

9 Q. That claim was filed in the UK
10 proceedings, right?

11 A. It was first just filed with the UK
12 administrator. It was only after the UK
13 administrator rejected it that I commenced
14 proceedings.

15 Q. What happened in May 2012?

16 A. There was a very visible sell down by
17 CVC to a US asset management firm called Waddell
18 Reed who was joined by Blackstone and, I
19 believe, the Norwegian Sovereign Wealth Fund
20 that essentially took half of the CVC stake.

21 At the same time there was another big
22 refinancing. The details are in the landscape
23 piece of paper that I attached to my motion. It
24 was at that point that a valuation of F1 became
25 visible from the outside for the first time.

Dr. Thomas Marsoner - December 15, 2015

Page 80

1 MARSONER

2 And if I may add, Mr. Mackenzie, the
3 senior CVC partner, in about 2012 in one of the
4 Bernie Ecclestone legal proceedings, stated
5 under oath that as late as 2011 he, Mackenzie of
6 CVC, still thought that his stake may be worth
7 zero.

8 MS. ALVAREZ: Why don't we take
9 another break.

10 THE VIDEOGRAPHER: The time is 11:44
11 a.m. We are going off the record.

12 (Recess)

13 THE VIDEOGRAPHER: This begins media
14 number three. The time is 12:09 p.m. We are
15 back on the record.

16 BY MS. ALVAREZ:

17 Q. Dr. Marsoner, I would like to go back
18 and take a look at Exhibit 4 which was your 2004
19 consultancy agreement with Lehman.

20 Is this the agreement you rely -- is
21 this the agreement you rely on as the basis for
22 your claim?

23 A. It's the contents of the agreement
24 that I rely upon. Technically it had, of
25 course, expired, and technically it was

Dr. Thomas Marsoner - December 15, 2015

Page 81

1 MARSONER

2 abrogated by the next one, but in the
3 interregnum period, during which I worked with
4 Lehman seamlessly, there had to have been rules
5 that governed the mutual behavior. And I
6 contend that the rules were exactly those that
7 were in here because this is the way it had also
8 happened when agreements before had expired.

9 Q. Do you rely on the contents of the
10 2006 agreement for your claim?

11 A. No, I couldn't, because the salient
12 aspect of F1 was my exchange with Tom Bernard,
13 and that predates the '06 agreement materially.

14 Q. So, then, you don't rely on the
15 contents of the 2007 agreement either?

16 A. I do not rely on the contents of the
17 2007 agreement either, no. It is the contents
18 of the 2004 agreement that I rely on for the --
19 for the formal -- the contract part of my claim.

20 Additional and separate to that is, of
21 course, the quantum meruit part of my claim.

22 Q. If you can turn to Section 3 again of
23 Exhibit 4 which is the compensation provision or
24 the compensation section. As you see, it states
25 that you would be paid a retainer and a

Dr. Thomas Marsoner - December 15, 2015

Page 82

1 MARSONER

2 quarterly fee.

3 Do you see that?

4 A. Hm-hmm.

5 Q. Were you typically paid retainers when
6 you executed these consultancy agreements?

7 A. I am not sure about the early ones,
8 but, yes, I mean, typically I think the way you
9 phrase it is correct. Typically I was paid
10 retainer fees which were in all cases fully
11 applicable against the success fees.

12 Q. What was the purpose of these retainer
13 fees?

14 A. Retainer fees in the investment
15 banking business are essentially earnest fees.
16 They are just -- they are certainly more
17 symbolic than actual, and they are certainly not
18 intended to be compensation for services
19 rendered. They -- I think earnest fee is a good
20 way to describe it, retainer fee in the
21 investment banking world.

22 We are being real with each other.
23 Here is some money which obviously then gets
24 deducted from what you really work for, the
25 success fee, but just so we are all -- so we all

Dr. Thomas Marsoner - December 15, 2015

Page 83

1 MARSONER

2 know that we mean it seriously with each other.

3 Of course, it creates a moral
4 obligation on my side to actually do something,
5 not just sit here, collect retainer.

6 Q. So it essentially makes it official
7 that you are being retained as an advisor for
8 Lehman Brothers --

9 A. I'm trying to think about that a
10 little bit, but I think when I say earnest fee
11 and you say makes it official that I'm a
12 retained paid advisor, then I think we are
13 talking about the same thing, yeah.

14 Q. Well, let's clarify.

15 You said, you know, it gave you a
16 moral obligation.

17 To do what?

18 A. To find deals.

19 Q. Were you paid a retainer under the
20 2006 agreement as well?

21 A. I believe so. We have it here -- I
22 believe there were retainers. I'm not sure
23 about the very first ones, but I believe that
24 there were retainers most of the time if not all
25 the time.

Dr. Thomas Marsoner - December 15, 2015

Page 84

1 MARSONER

2 Q. Do you have a claim that Lehman owes
3 you a retainer under any of your agreements?

4 A. Do you mean do I have a claim in
5 bankruptcy against Lehman or --

6 Q. Let me rephrase.

7 Do you contend that Lehman owes you a
8 retainer under any of the agreements that has
9 not been paid?

10 A. Oh, at this point do I claim that -- I
11 believe that the last fees that LBEL paid me,
12 which were sort of BAWAG derivative fees, were
13 paid net -- were either paid net of retainer or
14 inclusive of a retainer that hasn't been paid.

15 So, no, I do not -- so as I think
16 about this, I do not think that Lehman owes me
17 any retainer fees at this stage.

18 Q. And if you look at paragraph three,
19 (ii), it refers to a quarterly fee that would be
20 paid to you, correct?

21 A. Hm-hmm.

22 Q. What was the purpose of a quarterly
23 fee?

24 A. Same thing. Up front retainer,
25 quarterly retainer, is the same thing.

Dr. Thomas Marsoner - December 15, 2015

Page 85

1 MARSONER

2 Q. Were you typically paid quarterly fees
3 under the agreements?

4 A. Yeah, I believe so. Fairly classic,
5 up front and quarterly.

6 MS. ALVAREZ: Let's take a look at
7 your declaration which we'll mark as the next
8 exhibit.

9 (Marsoner Exhibit 5, Five-page
10 document entitled Declaration of Dr. Thomas
11 Marsoner in Support of the Motion of Dr. Thomas
12 Marsoner to Deem Proofs of Claim to be Timely
13 Filed by the Claims Bar Date, with cover page
14 labeled Exhibit B, and bearing no Bates stamps,
15 marked for identification)

16 BY MS. ALVAREZ:

17 Q. If you just take a look, this is the
18 declaration that you submitted in support of
19 your motion, correct?

20 A. Hm-hmm.

21 Q. We covered a lot of the information
22 that's in here already, so I think we can jump
23 down to paragraph eight, and in this declaration
24 you state: In 2005 I advised Lehman in my role
25 as senior advisor in both e-mails and in

Dr. Thomas Marsoner - December 15, 2015

Page 86

1 MARSONER

2 telephone conversations to continue Lehman's
3 investment in F1, which service I explicitly
4 provided in exchange for 10 percent of Lehman's
5 revenues related to the transaction as was
6 customary under the agreements. Lehman agreed
7 both orally and by e-mail to this fee in
8 exchange for my F1 advice.

9 Do you see that?

10 A. I see that, yes.

11 Q. When you say Lehman agreed orally to
12 the 10 percent fee, what are you referring to?

13 A. The retention of my services by
14 Pignatti originally.

15 Q. So these -- the telephone calls with
16 Pignatti?

17 A. The meeting when he told me that
18 JPMorgan didn't require my services which cost
19 them a billion dollars, and when he then said:
20 But certainly we want to continue to work with
21 you on this, Thomas.

22 Q. During that meeting did Pignatti tell
23 you: We will pay you 10 percent of Lehman's
24 revenues related to the transaction?

25 A. He used the word to "deepen" the

Dr. Thomas Marsoner - December 15, 2015

Page 87

1 MARSONER

2 relationship. The relationship was well
3 defined. When he said "I want to deepen it," it
4 was very clear what he meant.

5 Q. Okay. Did anyone else at Lehman
6 Brothers tell you orally that they would pay you
7 10 percent of Lehman's revenues related to the
8 transaction?

9 A. The course of dealings was so well
10 established within BAWAG Cerberus, you saw how
11 that found its way on to a piece of paper, the
12 10 percent, the 20 percent that we have now been
13 through quite a few times.

14 So against that background, whoever I
15 dealt with at Lehman, whether it was Pignatti or
16 later Bonacker or Meissner, the ground rule was
17 my services come in exchange for 10 percent of
18 firm revenues.

19 Q. Okay. So no one specifically said to
20 you you'll be paid 10 percent for Formula One?

21 A. Nobody had to tell me that
22 specifically.

23 Q. Okay. You also say here -- you said
24 Lehman agreed both orally, and then you said:
25 And by e-mail to this fee in exchange for my F1

Dr. Thomas Marsoner - December 15, 2015

Page 88

1 MARSONER

2 advice.

3 What e-mail are you referring to or
4 e-mails?

5 A. I refer to the Tom Bernard e-mail
6 exchange in which I said -- in which I wrote:
7 My senior advice continues to be available,
8 which was just a reminder, a factual statement
9 of fact, and where Tom Bernard responds: We are
10 inclined to accept your advice.

11 Q. Are you relying on any other e-mails
12 for the statement?

13 A. The Bernard e-mail exchange is the
14 main in writing part that I rely on.

15 MS. ALVAREZ: So we will take a look
16 at it.

17 (Marsoner Exhibit 6, Multipage e-mail
18 chain bearing at the top of the first page an
19 e-mail from Thomas Marsoner to Thomas Bernard,
20 dated Thursday, December 1, 2005, and Bates
21 stamped LEH_0000214 through 217, marked for
22 identification)

23 BY MS. ALVAREZ:

24 Q. You can take a look at this. It's a
25 long e-mail string, but let me know if the

Dr. Thomas Marsoner - December 15, 2015

Page 89

1 MARSONER

2 e-mail you are referring to is here. This is
3 marked Lehman 214 through Lehman 217.

4 A. I believe that is it, yes.

5 Q. Well, let's start at the bottom of the
6 e-mail string which would be the first e-mail
7 which actually starts on the bottom of Lehman
8 215.

9 If you take a look it is an e-mail
10 from you to Vittorio Pignatti dated November 25,
11 2005. Subject reads: F1 group sold to CVC
12 Capital Partners for undisclosed sum.

13 Now, in the very first sentence you
14 say: If this is the deal I suspect it is, my
15 senior advice is strongly against selling now.

16 Do you see that?

17 A. Yeah, I see that.

18 Q. Then you provide -- you have three
19 numbers here, so you provide three reasons for
20 your advice. Then -- so this is what you were
21 referring to when you advised Lehman Brothers
22 not to sell its stake in Formula One?

23 A. This is where I started. It's the
24 next one when I had the hard information. The
25 first one I suspected it because there was no

Dr. Thomas Marsoner - December 15, 2015

Page 90

1 MARSONER

2 way CVC would buy a one-year earnings quality
3 business, and in the next one I had heard that
4 Ron Dennis was supportive. At that point I knew
5 that they had done a deal.

6 Q. So, now, this first e-mail, the
7 November 25th, you sent to Pignatti only?

8 A. Hm-hmm.

9 Q. Then the second e-mail that you are
10 referring to is dated November 26. You also
11 sent it to Peter Sherratt and Tom Bernard?

12 A. Hm-hmm.

13 Q. Why did you add Peter Sherratt to the
14 e-mail?

15 A. Well, there are obviously legal
16 implications, and Peter has been around this
17 from the outset. So it was essentially Pignatti
18 was my direct interlocutor. The first one I
19 think you might want to consider an ordinary
20 course of dealings where I share my suspicion
21 with the guy I deal with all the time. The next
22 one starts with: Erat demonstrandum.

23 There I had hard information, and
24 that, I thought, I should send officially to the
25 group, that as far as I was concerned, was

Dr. Thomas Marsoner - December 15, 2015

Page 91

1 MARSONER

2 looking after Lehman's F1 stake.

3 Q. Okay. And I assume you copied Tom
4 Bernard for the same reason?

5 A. Yeah, yeah. Tom has always been
6 described to me from the -- discussed in '02 as
7 the decision maker on F1.

8 Q. So when you sent the e-mail on
9 November 25, had Pignatti asked for your advice
10 on whether to sell its stake, whether Lehman
11 should sell its stake in Formula One?

12 A. This is probably the thirtieth in the
13 series commencing with: Sorry, Thomas, JPMorgan
14 have no interest, but please continue to work
15 for us on this.

16 And then -- I mean, there are -- there
17 is a whole stack somewhere in the documents, and
18 I just provided updates. This was a pretty
19 important update, but it wasn't yet crucial.

20 Q. I want to make sure I understand.

21 So you said there was an e-mail from
22 Pignatti asking you to continue --

23 A. No, that was the conversation I told
24 you about when he called me into his office
25 after he had learned that JPMorgan thought they

Dr. Thomas Marsoner - December 15, 2015

Page 92

1 MARSONER

2 knew it all anyway.

3 Q. And that conversation occurred prior
4 to November 25?

5 A. Oh, yeah, that occurred three years
6 prior to November 25th of '02 -- of '05. It
7 occurred in '02 at the end of the JPMorgan
8 discussion.

9 Q. So, then, if you look -- if you can
10 look at Lehman 216 which is the bottom of the
11 November 25th e-mail, the second to last
12 paragraph states: Needless to say, if a fresh
13 face were helpful to facilitate things here,
14 mine continues to be available for a very modest
15 percentage participation in LB's gain upon
16 eventual sale.

17 Do you see that?

18 A. Yes, I see that.

19 Q. What did you mean by the statement?

20 A. It is a factual statement just
21 reconfirming that I was working here for my
22 usual modest percentage, ten to be precise.

23 Q. Did Pignatti respond to this e-mail?

24 A. There was one response by him
25 somewhere in this chain which was a two-word

Dr. Thomas Marsoner - December 15, 2015

Page 93

1 MARSONER

2 response with the words "the devil."

3 And what that was was Pignatti making
4 fun of a young colleague of ours called Makram
5 Azar, who sort of two days after we had
6 essentially done all the material stuff that
7 needed to be done and needed to be discussed,
8 offered to start working on it.

9 So there is a -- it's somewhere in the
10 disclosure, there is a written acknowledgment by
11 Pignatti to very much have received and read
12 these e-mails by making fun of somebody that
13 offered his services way after the fact.

14 Q. Is there written acknowledgment from
15 Pignatti agreeing to pay you a very modest
16 percentage participation in LB's gain upon
17 eventual sale?

18 A. There didn't have to be. The terms
19 were clear from the outset.

20 Q. So nothing in writing?

21 MR. VAN TOL: Object to the form.

22 A. The course of dealings between
23 Pignatti and me, between Lehman and me was very
24 clearly established. It did not require any
25 further repetition.

Dr. Thomas Marsoner - December 15, 2015

Page 94

1 MARSONER

2 Q. So let's look -- let's look at the
3 November 26 e-mail which is on Lehman 215. This
4 is the e-mail we were discussing a few minutes
5 ago where you sent it to Pignatti, Peter
6 Sherratt and Tom Bernard, and again you provide
7 some more information regarding F1.

8 And then in the second paragraph you
9 state: Hence, don't also panic, keep your stake
10 and don't be spooked if JPM does a BayLaBa. As
11 a matter of fact, JPM selling out would make it
12 easier to admit LP to the top (Alpha Prema)
13 table.

14 Then you state in the third paragraph:
15 If conversely you want to get LB out of the F1
16 headlines (or feel your relationship with Bernie
17 has become too bad), a Marsoner family company
18 previously involved in consumer products would
19 happily consider taking it on if it comes with a
20 to-be-agreed financing package fairly sharing
21 risks and rewards.

22 Do you see that?

23 A. I see that, yes.

24 Q. What did you mean by that?

25 A. That was an offer that turned out to

Dr. Thomas Marsoner - December 15, 2015

Page 95

1 MARSONER

2 be completely unnecessary because Lehman was
3 very happy to stay invested and have its name as
4 a shareholder.

5 So that was just an alternative offer
6 that it turns out was not necessary and -- and
7 therefore it was neither taken up nor discussed.
8 Has nothing to do with my advisory relationship.
9 This was a principal offer.

10 Q. An offer by whom?

11 A. Well, the company's name would have
12 been Getranke Management, a -- that was a client
13 of Lehman's publicly known to have been involved
14 in the great Austrian beer wars where Pignatti
15 actually advised us, the Marsoner family, who
16 were the principals at the time, in a whole
17 series of difficult discussions that have no
18 bearing on this topic, but it's a -- it was so
19 well known and it was the largest shareholder of
20 the largest brewer in the country which had 56
21 percent market share, so it's a substantial
22 company that would have been credible as an
23 investor if they had needed it. But nothing to
24 do with my advisory relationship.

25 Q. Now, you call it a Marsoner family

Dr. Thomas Marsoner - December 15, 2015

Page 96

1 MARSONER

2 company?

3 A. Yeah.

4 Q. What interest do you have in this
5 company or did you have at the time?

6 A. This was primarily my dad's company.
7 I -- my interest in it sort of evolved over
8 time. What it was at that point in time I don't
9 remember, but it's best described as a Marsoner
10 family company.

11 Q. Now, had Lehman taken you up on the
12 offer and this Marsoner family company purchased
13 Lehman's stake, how would you, as Lehman's
14 advisor, have been compensated?

15 MR. VAN TOL: Objection, calls for
16 speculation.

17 A. That would have required a complete
18 new set of negotiations. It never came to it.

19 Q. So you would have had to have
20 negotiated your fee at that point?

21 A. If this had come to pass, obviously a
22 potential conflict of interest would have
23 arisen. That potential conflict of interest,
24 which never did arise because it never came to
25 pass, would have had to be managed in some way,

Dr. Thomas Marsoner - December 15, 2015

Page 97

1 MARSONER

2 just as it was managed when years before I was
3 still a Lehman employee recusing myself of all
4 beer matters and acting only -- and acting only
5 as a principal with Pignatti advising me.

6 We were always very careful to
7 precisely document in those years what I did as
8 an employee and what I would have done for this
9 company. But, again, it's not material here.
10 It was an offer that I made because I did sense
11 that a staid bank and a shareholder in Formula
12 One doesn't necessarily go together very easily.

13 As we have seen from JPMorgan getting
14 out, as we've seen from Bayerische Landesbank
15 getting out, F1 is high publicity, high drama,
16 not an obvious investment for a bank, although
17 as it turns out, a fantastic one.

18 Q. Other than your conversations with Tom
19 Bernard and Pignatti, did you have conversations
20 with anyone else at Lehman about whether Lehman
21 should retain its stake in Formula One?

22 A. During that time?

23 Q. Yes.

24 A. Magnoni for sure.

25 Q. Anyone else?

Dr. Thomas Marsoner - December 15, 2015

Page 98

1 MARSONER

2 A. Through Magnoni, by definition with
3 Dick Fuld. Magnoni was closest by far of all
4 the characters involved to Dick Fuld. Dick and
5 Magnoni spoke a lot, so I certainly made sure
6 that Magnoni was fully apprized of my views at
7 the time so as to make sure that Dick would know
8 about it.

9 Q. Did Magnoni ever --

10 A. Dick Fuld.

11 Q. I'm sorry, I didn't mean to cut you
12 off.

13 Did Magnoni ever tell you that he told
14 Dick Fuld?

15 A. Oh, yeah. The history, I think, some
16 of this has been -- has been said in previous
17 depositions, the history of this investment was
18 a personally somewhat difficult one for both
19 Dick Fuld and Ruggero Magnoni, because when
20 originally the Kirch loan was extended, my
21 understanding is that Ruggero proposed it in the
22 European Capital Commitments Committee or Credit
23 Committee or whatever actually turned it down,
24 whereupon Ruggero got on the plane to New York
25 and convinced Dick to do it anyway because it

Dr. Thomas Marsoner - December 15, 2015

Page 99

1 MARSONER

2 was so well collateralized, at which point Dick
3 overruled the committee and Lehman gave the
4 loan.

5 When that then blew up, it was not an
6 easy situation, certainly not for Ruggero, and,
7 you know, probably even something that Dick
8 didn't completely disregard.

9 Q. Okay. Then how do you know that
10 Magnoni kept Dick Fuld apprized of the advice
11 you were giving on F1?

12 MR. VAN TOL: Objection, asked and
13 answered. Go ahead.

14 A. Magnoni told me. Well, I know it from
15 Magnoni, but when I mentioned it to Dick at my,
16 for me, important meeting with him in August of
17 '08, Dick did not sound in the least surprised.

18 MS. ALVAREZ: I think it might be
19 lunch is there. Instead of me starting a new
20 subject, might as well take a break.

21 THE VIDEOGRAPHER: The time is 12:40
22 p.m. and we are off the record.

23 * * *

24 L U N C H R E C E S S

25 * * *

Dr. Thomas Marsoner - December 15, 2015

Page 100

1

MARSONER

2

* * *

3

A F T E R N O O N S E S S I O N

4

* * *

5

THE VIDEOGRAPHER: The time is 1:44

6

p.m. We are back on the record.

7

BY MS. ALVAREZ:

8

Q. Good afternoon, Mr. Marsoner. If we

9

could take a look at Exhibit 5 which is your

10

declaration that we previously marked.

11

If we could take a look at paragraph

12

ten, you state in the declaration: I later

13

advised Lehman on Cerberus' acquisition of

14

BAWAG, an Austrian bank, from April 2006 to

15

December 2006 for which LBHI paid me 20 percent

16

of the investment banking revenues generated

17

from the transaction, despite the fact that no

18

formal agreement expressly covered the BAWAG

19

transaction.

20

Do you see that?

21

A. I see that, yes.

22

Q. Would you please describe the BAWAG

23

transaction that you are referring to?

24

A. BAWAG is a significant bank in

25

Austria, the fourth largest, which the owner,

Dr. Thomas Marsoner - December 15, 2015

Page 101

1 MARSONER

2 the Austrian trade union organization, had to
3 sell for a number of complicated reasons that
4 don't matter here.

5 Lehman Brothers advised by me, advised
6 Cerberus on this acquisition which was
7 tactically relatively complicated and required a
8 relatively significant amount of prior knowledge
9 of how the Austrian trade union system worked,
10 how the bank worked.

11 It ended up as a three-party auction
12 where our client Cerberus competed with
13 Bayerische Landesbank and Lone Star, the other
14 US -- it is a distressed debt buying hedge fund.

15 My role, very similar to the F1 case,
16 was one where I really knew the in and outs and
17 the history that had led to the problems that
18 triggered the sale, and so I was able to
19 position Cerberus very early, again, very
20 similar to the F1 case because I saw that this
21 could only be in that case solved by a sale to a
22 new owner, just like F1 in November or so of
23 2005. Very, very fast paced.

24 It was no time for any sort of legal
25 niceties like drawing big advisory agreements.

Dr. Thomas Marsoner - December 15, 2015

Page 102

1 MARSONER

2 We had to work in a team. I contributed my
3 experience, and our client won the bid, was
4 very, very happy with us, actually even -- which
5 I am told is pretty rare in this business --
6 voluntarily increased the fee that Cerberus was
7 due to pay Lehman, and the -- when the closing
8 came around, Graham Wilson, who was the chief
9 administrative officer for Lehman in Europe,
10 essentially sent me an e-mail with a spreadsheet
11 which was part of the record here which totaled
12 up what I was due to receive which is 20 percent
13 of the M&A fee, being 10 percent of the very
14 significant financing fee, and also 10 percent
15 of two principal gains by Lehman, both around
16 swaps, then deducted from that the quarterly and
17 other retainer fees.

18 And I didn't have to negotiate that.
19 I didn't have it in any of the agreements,
20 didn't -- we didn't have to negotiate. It was
21 just an implementation of the established course
22 of dealings between Lehman and me completely,
23 you know, completely problem free.

24 Q. Now, you have told me a lot here so
25 we'll take it step by step.

Dr. Thomas Marsoner - December 15, 2015

Page 103

1 MARSONER

2 A. Sure.

3 Q. When did you start working on BAWAG?

4 A. Very much in parallel to what I told
5 you about F1, that I really started working on
6 F1 at age ten. On BAWAG I started working when
7 Susan Gutfreund, the wife of my then boss John
8 Gutfreund, the CEO of Salomon Brothers, called
9 me up and said: So, Thomas, there is this
10 Austrian in New York City. His name is Wolfgang
11 Flottl. He's a billionaire, he says. What do
12 you know about him?

13 This must have been in 1990. Wolfgang
14 Flottl was the son of the CEO of BAWAG and who
15 went through the world for years looking like a
16 billionaire. Years later it became obvious that
17 the source of his hedge fund was purely loans
18 from daddy's bank which had the additional
19 problem that daddy didn't own the bank, so it
20 was most obviously a highly unstable situation
21 that I had, for lack of a better word, sniffed
22 around for many years until it culminated in a
23 legal situation some of you may have been
24 involved in, Revco was the name of the company
25 in New York that went to the wall, pretty much

Dr. Thomas Marsoner - December 15, 2015

Page 104

1 MARSONER

2 took BAWAG with it. BAWAG was saved by the
3 state, and at that point it became clear that my
4 16 years following this situation might come to
5 a good use.

6 Q. When did you start working
7 specifically on the Cerberus acquisition?

8 A. I think what's written here with April
9 2006 is probably quite correct. The deal only
10 closed in early May of '07, but it got signed on
11 New Year's Eve, 2006.

12 MS. ALVAREZ: Let's look at an
13 exhibit, Lehman 201, 202.

14 (Marsoner Exhibit 7, Two-page e-mail
15 chain bearing at the top of the first page an
16 e-mail from Thomas Marsoner to Thomas Bernard,
17 dated December 1, 2005, and Bates stamped
18 LEH_0000201 and 202, marked for identification)

19 BY MS. ALVAREZ:

20 Q. If we look at this, it's an e-mail
21 string between several individuals at Lehman.
22 And we'll go through the e-mails.

23 The very first e-mail is on the bottom
24 of the second page and it is an e-mail from you
25 to Vittorio Pignatti dated December 23rd, 2008,

Dr. Thomas Marsoner - December 15, 2015

Page 105

1 MARSONER

2 subject: BAWAG sweat equity.

3 Do you see that?

4 A. Yes.

5 Q. The text of your e-mail reads: What,
6 please, is my sweat equity in your investment
7 if, on top of, one, creating the opportunity in
8 the first place; two, convincing my buddy plus
9 disciple David to admit you; three, I
10 demonstrably kill the GMAC structure? Please
11 advise. Thanks. T.

12 What did you mean by your sweat
13 equity?

14 A. It was an additional request that I
15 made over and above the fees that were agreed
16 which was turned down by Peter Sherratt,
17 actually.

18 Q. So at this point you already had a
19 conversation with Lehman about your fees in
20 BAWAG?

21 A. No, I did not have to have a
22 conversation about the fees. This was -- for
23 the reason I set out here, there was an
24 additional component of economics that was made
25 available which was essentially call options,

Dr. Thomas Marsoner - December 15, 2015

Page 106

1 MARSONER

2 stock options, and I raised my hand and said:
3 Could I please have some of those as well, and
4 that was turned down.

5 Q. So this has nothing --

6 A. But that had nothing to do with the
7 agreed fees which were paid with no discussion
8 and no problems.

9 Q. Okay. So this had nothing to do with
10 the 20 percent of the investment banking
11 revenues?

12 A. Not at all, this was something that I
13 was asking because I thought it would be fair to
14 get a little extra. The firm thought otherwise
15 and it didn't happen.

16 Q. Okay. Let's look at another document.
17 Let's look at Lehman 203.

18 A. Maybe I could describe it even more
19 precisely now, having precisely reread it.

20 What was completely non-contentious
21 was my advisory work. Here this is Pignatti had
22 moved on. He was no longer my counterpart in --
23 as head of M&A he had taken a merchant banking
24 role. And in this merchant banking role, his
25 merchant banking fund got to invest into this

Dr. Thomas Marsoner - December 15, 2015

Page 107

1 MARSONER

2 deal.

3 MS. ALVAREZ: This would be eight.

4 This is a one-page document labeled Lehman 203.

5 (Marsoner Exhibit 8, Single-page
6 e-mail from Vittorio to David Stonberg and
7 others, dated Thursday, May 24, 2007, and Bates
8 stamped LEH_0000203, marked for identification)

9 BY MS. ALVAREZ:

10 Q. This is an e-mail from Pignatti to
11 David Stonberg. Cc'd are Michael Odrich and
12 Anthony Tutrone. It's dated May 24th, 2007.

13 I recognize, Dr. Marsoner, that you
14 are not copied here, but have you seen this
15 e-mail before?

16 A. I believe it was produced by your
17 clients in discovery, right?

18 Q. That's right.

19 Do you know who David Stonberg is?

20 A. I'm afraid I don't know him, I don't
21 think I've ever met him nor do I recognize the
22 name.

23 Q. What about Michael Odrich?

24 A. I believe, although I'm not certain,
25 that he at the time was the head of Lehman

Dr. Thomas Marsoner - December 15, 2015

Page 108

1 MARSONER

2 Global Merchant Banking where Pignatti was the
3 head of Lehman European Merchant Banking. That
4 is sort of principal investments out of funds.

5 Q. What about Anthony Tutrone?

6 A. I do not know him.

7 Q. Now, in this e-mail Pignatti states:

8 In addition, an XLB, Thomas Marsoner, who is a
9 consultant for Austria, gave us a lot of help in
10 assessing the political dangers, management role
11 of post office in getting a board seat. For him
12 a three hundred to \$400 carry would be money
13 well spent as he has been retained by Cerberus
14 as permanent senior advisor to BAWAG, and he has
15 been, and will be if we give him carry, a more
16 accessible source of info on BAWAG than the
17 Cerberus guys.

18 Do you see that?

19 A. I see that, yes.

20 MR. VAN TOL: I think it's three
21 hundred to \$400,000.

22 A. It's -- it concerns --

23 MR. VAN TOL: Wait for a question.

24 BY MS. ALVAREZ:

25 Q. I don't know if I mentioned, the

Dr. Thomas Marsoner - December 15, 2015

Page 109

1 MARSONER

2 subject line says: BAWAG IBD fee.

3 Do you see that?

4 A. Yes.

5 Q. What does IBD stand for?

6 A. Investment banking department.

7 Q. Do you know what Pignatti meant by the
8 three hundred to \$400,000 carry?

9 A. I can suspect that what he meant is
10 the sweat equity that we discussed before which
11 never happened.

12 Q. So this was never offered to you?

13 A. It was discussed but I was never -- I
14 was never given this. Also, I have never been
15 retained by Cerberus as a permanent senior
16 advisor to BAWAG, so there is a fairly important
17 part of this sentence here which is just
18 factually false.

19 Q. When were you paid for your work on
20 BAWAG?

21 A. Sorry, when was I paid? I was paid
22 after the closing, relatively soon after the
23 closing, but I don't know what the date of the
24 Graham Wilson e-mail is. Must be something like
25 either May or June of 2007.

Dr. Thomas Marsoner - December 15, 2015

Page 110

1 MARSONER

2 Q. Who at Lehman were you working with on
3 that transaction?

4 A. Christian Meissner, Michael Bonacker,
5 Biergen Kreiger.

6 Q. Anyone else?

7 A. No, most of my work was done directly
8 with the Cerberus people.

9 Q. Okay. We are going to shift gears a
10 bit.

11 MS. ALVAREZ: We are going to mark
12 another exhibit. It is Marsoner 159. This one
13 was produced by Dr. Marsoner labeled Marsoner
14 159 and 160.

15 (Marsoner Exhibit 9, Two-page e-mail
16 chain bearing on the top of the first page an
17 e-mail from Thomas Marsoner to Jeremy Isaacs,
18 dated Wednesday, July 4, 2007, and Bates stamped
19 Marsoner00000159 and 160, marked for
20 identification)

21 THE WITNESS: Could I just, on this
22 sweat equity, make one clarifying statement?

23 MS. ALVAREZ: Sure.

24 THE WITNESS: This whole sweat equity
25 thing concerns an aspect of this transaction

Dr. Thomas Marsoner - December 15, 2015

Page 111

1 MARSONER

2 that was less than 5 percent of it. Cerberus
3 bought BAWAG for 3.6 billion Euros, and this
4 fund that Pignatti ran co-invested 150 million.
5 So this was a 5 percent co-invest --

6 MS. ALVAREZ: Okay.

7 THE WITNESS: -- that --

8 MS. ALVAREZ: Okay. Thank you.

9 BY MS. ALVAREZ:

10 Q. So if you look at this Exhibit 9, it
11 is an e-mail from you to Jeremy Isaacs dated
12 July 4th, 2007. The subject line reads: Thanks
13 for the coffee.

14 I think we covered this, but I'm going
15 to ask again.

16 Who is Jeremy Isaacs?

17 A. He was at the time the chief executive
18 officer of Lehman Brothers in Europe.

19 Q. Why did you send him this e-mail?

20 A. Primarily, of course, because I sent
21 thank you notes after people invite me for
22 coffee, and my well disclosed and blatantly
23 obviously visible ulterior motive was, of
24 course, the usual, call it victory laps, call it
25 bragging, call it positioning. I would probably

Dr. Thomas Marsoner - December 15, 2015

Page 112

1 MARSONER

2 prefer the word positioning, in which I just
3 wanted to put on the record that the Formula One
4 investment that was already looking very good.
5 At that point in time was really primarily based
6 on my timely and correct advice that the senior
7 guy, with all due modesty, in my view correctly
8 characterized as: That's huge.

9 So it was to prepare the ground for an
10 eventual fee claim when and if revenues would
11 become visible.

12 Q. Did you tell Jeremy Isaacs that you
13 were expecting to be paid for Formula One?

14 A. This was a coffee with a very senior
15 guy. He had invited me. To the best of my
16 knowledge it was very clear to him what I meant
17 both over the coffee and then when I, you know,
18 set it out. But I certainly remained both
19 polite and there was no reason to jump the gun.
20 Revenues were not then visible.

21 Q. So, then, at this point in time you
22 didn't say anything to him about -- or you are
23 saying dropping the gun, you didn't drop the
24 gun, you didn't tell him that you expected to be
25 paid?

Dr. Thomas Marsoner - December 15, 2015

Page 113

1 MARSONER

2 A. I think one can say things quite
3 clearly without putting them prematurely and
4 impolitely. I think by appending my claim to
5 fame e-mails I made very clear what I was
6 implying here. But I didn't do more than imply
7 it, I didn't want to do more, didn't need to do
8 more. It wasn't the time.

9 But I did feel -- I did feel the need
10 to establish with the senior decision makers at
11 Lehman that the way I looked at it, the F1
12 investment was very much my deal. The reason I
13 was so motivated to make that point at the time
14 was because at least at the time I had come to
15 the conclusion that both Jeremy, chief executive
16 Europe, and certainly Dick Fuld, had heard not
17 from my dear colleagues at Lehman about my role
18 in Cerberus BAWAG, but from the Cerberus guys.

19 Q. Looking at the text of your e-mail,
20 you identify three transactions, Formula One
21 being the third transaction.

22 The first one you identify is Telecom
23 Austria, right?

24 A. Yeah.

25 Q. Was Telecom Austria covered by an

Dr. Thomas Marsoner - December 15, 2015

Page 114

1 MARSONER

2 advisory services agreement?

3 A. There were a whole number of
4 transactions around Telecom Austria that in some
5 ways I was involved in, in some cases more, in
6 some cases less. Some were covered, some were
7 not.

8 Q. Which ones were you referring to in
9 this e-mail?

10 A. Lehman made good money out of
11 certainly some equity issuance there. There was
12 also at least one M&A deal that Lehman made
13 money on, and I was involved. He knew that I
14 was involved, a major Austrian company.

15 Q. Did he know that you were involved in
16 Formula One before sending this e-mail?

17 A. I do not know. I do not know.

18 Q. What about number two, the sale of
19 60,000 apartments for the Republic of Austria,
20 were those covered by an advisory services
21 agreement?

22 A. Those -- that specific assignment was
23 definitely covered. Yes, it was multiyear.
24 Generated something like a 10 million Euro fee
25 for Lehman.

Dr. Thomas Marsoner - December 15, 2015

Page 115

1 MARSONER

2 Q. Did Jeremy Isaacs respond to this
3 e-mail?

4 A. No, he did not.

5 Q. Did you have a telephone conversation
6 with Jeremy Isaacs after you sent this e-mail?

7 A. After this e-mail I do not believe
8 that I had one, no. I saw no reason.

9 Q. Have you discussed Formula One with
10 Jeremy Isaacs since July 4th, 2007?

11 A. Yes. You asked me earlier and I told
12 you that at some point I now believe before
13 launching the UK proceedings, I went to see him
14 with my evidence book.

15 DISCOVERY REQUEST

16

17 MS. ALVAREZ: I would just like to
18 note for the record that Dr. Marsoner testified
19 that he reviewed the evidence book in
20 preparation for this deposition and we don't
21 have a copy, so we would call for its
22 production.

23 MR. VAN TOL: Consider your request.
24 I don't know if it was called for.

25 MS. ALVAREZ: Well, it's called for

Dr. Thomas Marsoner - December 15, 2015

Page 116

1 MARSONER

2 now, and we'll follow up in correspondence.

3 BY MS. ALVAREZ:

4 Q. In this e-mail with Jeremy Isaacs you
5 mention that you thank him for his advice on
6 your little asset management project?

7 A. Hm-hmm.

8 Q. What was this asset management
9 project?

10 A. I had the idea to launch, and
11 ultimately did launch an enhanced index fund,
12 asset management approach, which I called
13 Indexceed Limited which is essentially -- the
14 strategy is essentially a passive strategy
15 slightly optimized around various edges which
16 gave certainly top quartile performance. I
17 spent a number of years on it, but I never
18 managed to raise any significant funds for it so
19 ultimately folded it again.

20 Q. Okay.

21 MS. ALVAREZ: We'll move on to the
22 next exhibit, then, which is Marsoner 157 to
23 158.

24

25

Dr. Thomas Marsoner - December 15, 2015

Page 117

1

MARSONER

2

(Marsoner Exhibit 10, Two-page e-mail

3

chain bearing on the top of the first page an

4

e-mail from Thomas Marsoner to Dan Schwarzmann,

5

dated Monday, December 3, 2012, and Bates

6

stamped Marsoner00000157 and 158, marked for

7

identification)

8

BY MS. ALVAREZ:

9

Q. This is being marked as Exhibit 10.

10

If you could take a look at it.

11

So this is an e-mail from you, Dr.

12

Marsoner, to Dan Schwarzmann at PwC. It's dated

13

December 3rd, 2012, and it looks like you are

14

forwarding to him an e-mail from Bruce Matthews

15

to you, or it's really an e-string between you

16

and Bruce Matthews in August 2009.

17

Do you see that?

18

A. Yes, I see that.

19

Q. Well, let's look at the original

20

e-mail which is actually on 158 the next page.

21

That e-mail is from you to Bruce

22

Matthews dated August 10, 2009. It reads: Who

23

at your shop oversees the Lehman investment in

24

the CVC group in Formula One, please? I have

25

had a fair amount to do with LB making that

Dr. Thomas Marsoner - December 15, 2015

Page 118

1 MARSONER

2 investment and would like to just find out where
3 you stand on it so we can see if a project of
4 mutual interest could ensue.

5 Do you see that?

6 A. I see that, yes.

7 Q. Who is Bruce Matthews?

8 A. He was a colleague of mine on the
9 credit risk committee of Lehman Brothers Europe
10 Limited.

11 Q. Why did you send this e-mail to him?

12 A. Because he is an employee Alvarez &
13 Marsal.

14 Q. Why did you want to send this to an
15 employee of Alvarez & Marsal?

16 A. I suspected that Alvarez & Marsal
17 would have some involvement with the Lehman
18 investment in Formula One.

19 Q. Where was Bruce Matthews based, do you
20 know?

21 A. I believe in London, certainly at the
22 time I think he was based in London.

23 Q. Why would A&M have any involvement in
24 Lehman's investment in F1?

25 A. Because A&M were the -- what's it

Dr. Thomas Marsoner - December 15, 2015

Page 119

1 MARSONER

2 called -- the administrator equivalent of Lehman
3 in the US.

4 Q. You say in the e-mail that you would
5 like to just find out where you stand on it to
6 see if a project of mutual interest could ensue.

7 What project of mutual interest are
8 you referring to?

9 A. There were a whole number that were
10 imaginable including, but not limited to selling
11 the stake again. And I will not -- I will not
12 hesitate to freely admit that a part of the
13 motivation of writing this e-mail was the same
14 motivation that led me to write the Isaacs
15 e-mail, the Bonacker e-mail, the Fuld
16 conversation, just make sure it was widely known
17 that around F1 and Lehman, my hat was in the
18 ring.

19 Q. Did you inform Bruce Matthews that you
20 expected to be paid for Formula One?

21 A. Again, revenues were a long way from
22 visible at the time. Just like with all the
23 other prepare-the-ground conversations, there
24 was nothing that I could charge my 10 percent
25 on.

Dr. Thomas Marsoner - December 15, 2015

Page 120

1 MARSONER

2 Q. Did you inform Bruce Matthews that you
3 eventually expected to be paid by Lehman when
4 revenues were realized?

5 A. I do not believe that I said that
6 explicitly at the time, just like I didn't say
7 it explicitly in all the other
8 prepare-the-ground communications.

9 Q. And Bruce Matthews responds: Happy to
10 introduce you to our guys responsible for the F1
11 position. Can you advise me what capacity you
12 have been involved and would consider being
13 involved so I can set that up properly?

14 Do you see that?

15 A. I see that, yes.

16 Q. Then you respond to that e-mail on
17 August 11, 2009, which is the same date, and you
18 respond: My involvement goes back to my
19 full-time years at Lehman pre-2002 when CVC
20 bought out BayernLB, my early understanding that
21 this deal was pre-agreed with all the key then
22 warring F1 parties was, I believe -- you say
23 related e-mails exist -- the original reason to
24 for LB to stay invested at that time. At this
25 stage I would like to help you guys maximize

Dr. Thomas Marsoner - December 15, 2015

Page 121

1 MARSONER

2 value here.

3 How did you expect to help Lehman
4 maximize value?

5 A. Well, if Alvarez & Marsal had picked
6 up on this, there were a whole number of ways in
7 which I could have helped them since I really
8 knew the space better than most, just -- just
9 for example what I wrote here. I could have
10 helped them to sell it had they wanted to sell
11 it early, I could have helped them vis-a-vis
12 CVC.

13 There were a number of things that I
14 could have done in addition to what I already
15 had done in '05 which I obviously wanted to make
16 sure that they were -- I think I used the word
17 institutionally aware of.

18 Q. Did Bruce Matthews take you up on your
19 offer?

20 A. Absolutely not, nothing tangible ever
21 came back from either Bruce or Alvarez & Marsal.

22 Q. Then Bruce Matthews responds on August
23 13, 2009: That F1 guy is in the US. I was due
24 to go out next week and was going to brief him,
25 but then may postpone now, so I will get in

Dr. Thomas Marsoner - December 15, 2015

Page 122

1 MARSONER

2 touch and introduce you.

3 Do you see that?

4 A. I see that, yes.

5 Q. Did you ever get in touch with the US
6 guys responsible for F1?

7 A. I do not even know his identity to
8 this day.

9 Q. Did you try and learn their -- or his
10 or her identity?

11 A. I think I followed up often enough
12 with Bruce Matthews to understand that they had
13 no interest in taking this forward with me.

14 Q. So you didn't follow up?

15 A. I followed up on a number of
16 occasions. So long as he was on the creditors
17 committee of LBEL, I asked him every time I saw
18 him.

19 Q. Did you at any point tell him:
20 Listen, I expect to be paid for this?

21 A. It was premature. It was premature.
22 There were no visible revenues at the time.

23 Q. And during your -- by the way, were
24 your follow-ups by e-mail?

25 A. Since I sent this to Dan Schwarzmann

Dr. Thomas Marsoner - December 15, 2015

Page 123

1 MARSONER

2 who was the decision maker/administrator at
3 LBEL, I assume that this is -- that this is the
4 core of the relevant e-mail traffic.

5 Q. Dan Schwarzmann is the administrator
6 of Lehman Brothers Europe Limited?

7 A. Europe Limited, yes. He works for PwC
8 and is the senior administrator for LBEL.

9 Q. Okay. So in your conversations with
10 Bruce Matthews, what did he tell you about the
11 Formula One investment?

12 A. That it wasn't him. There was some
13 other guy he was going to produce which never
14 happened.

15 Q. Did he tell you why the guy was in the
16 US?

17 A. No, I didn't particularly -- I mean,
18 Alvarez & Marsal is a US firm so I wasn't
19 surprised that the guy would be in the US.

20 Q. So you didn't ask: Why is this guy in
21 the US dealing with a European investment?

22 A. It's a US firm. I did not know where,
23 upon reinvestment, the F1 stake was held. Could
24 have been in Europe, some island in between,
25 could have been the US. I did not know. I

Dr. Thomas Marsoner - December 15, 2015

Page 124

1 MARSONER

2 surmised that Alvarez & Marsal would have
3 something to do with it and I surmised that they
4 would want to talk to me. It turns out they did
5 not.

6 But revenues have not crystalized.
7 Revenues crystalized in May of 2012, and I put
8 my claim in in August of 2012, and this is still
9 the period during which I was hoping to come to
10 a -- an agreement with Dan Schwarzmman of PwC
11 and LBEL.

12 So I shared with him a whole number of
13 things that I thought were pertinent and that
14 would show him that in fairness I was owed some
15 money here.

16 Q. Did you tell him that you were owed
17 some money?

18 A. To Dan Schwartzman?

19 Q. Hm-hmm.

20 A. Oh, very much. I put down a hundred
21 million on the original claim in August and
22 revised that to 150 million when I heard more
23 data. Proof of claim is the name of that form
24 and the very first one had a hundred million in
25 it.

Dr. Thomas Marsoner - December 15, 2015

Page 125

1 MARSONER

2 Q. This is a proof of claim against
3 Lehman Brothers Europe Limited?

4 A. My contractual partner, yes.

5 Q. Why did you increase the claim from a
6 hundred million to 150 million?

7 A. Because I got more data on the -- on
8 the cash that had actually come out and on the
9 valuation that was reasonable.

10 Q. You ultimately settled this claim with
11 Lehman Brothers Europe, correct?

12 A. That is correct, yes.

13 MS. ALVAREZ: Let's just take a look
14 at it. It's Marsoner 217. We'll mark this
15 Exhibit 11.

16 (Marsoner Exhibit 11, Multipage
17 document entitled Consent Order, bearing the
18 hand-written date at the top of the page 19th
19 June, 2014, and Bates stamped Marsoner00000217
20 through 227, marked for identification)

21 BY MS. ALVAREZ:

22 Q. Dr. Marsoner, if you could just look
23 at Exhibit 11.

24 Is this a copy of the order approving
25 your settlement with Lehman Brothers Europe

Dr. Thomas Marsoner - December 15, 2015

Page 126

1 MARSONER

2 Limited?

3 A. I believe it is.

4 Q. Attached to the order is the actual
5 settlement agreement, is that right?

6 A. That is correct.

7 Q. And the settlement is dated June 5,
8 2014?

9 A. That is so.

10 Q. How did it come to be that you settled
11 this claim?

12 A. I was advised by my QC, Gabriel Moss,
13 that my claim was very solid in substance, but
14 that it had the significant problem that the one
15 and a half billion dollars in profits that I was
16 basing my claim on was sitting outside the UK
17 jurisdiction. And the way UK bankruptcy law
18 works, it would have been exceedingly difficult
19 to enforce a positive verdict in this UK case
20 against a US entity.

21 Essentially, essentially here -- and
22 please forgive me, I am rapidly getting out of
23 my depth legally, but as I understood it, I had
24 a really good chance that the UK court would
25 ultimately say yes, you are owed your 10 percent

Dr. Thomas Marsoner - December 15, 2015

Page 127

1 MARSONER

2 of the 1.5 billion, but so sorry Thomas, we
3 don't have the money here.

4 Q. When did your -- you say QC.

5 When did your QC advise you that the
6 profits were sitting outside of the UK
7 jurisdiction?

8 A. That wasn't -- that -- I don't
9 remember when, but in the course of the UK
10 proceeding, I forget when exactly that was,
11 there must be e-mails to that effect still, it
12 was the administrators, PwC administrators who
13 said: Look, we don't have the money here, it is
14 in the US, not in the UK.

15 Q. So this was prior -- prior to June 5,
16 2014, prior to --

17 A. Yeah, very much, it was -- other than
18 generally not being a very litigious person, to
19 be honest, knowing that I had a good chance to
20 win this but that the victory would have a very
21 high risk of being an empty one was the single
22 most important consideration for me to settle
23 this at all and particularly to settle this at
24 so low a number.

25 Q. So at that point were you considering

Dr. Thomas Marsoner - December 15, 2015

Page 128

1 MARSONER

2 filing a claim against the Lehman US entities?

3 A. Yes, of course.

4 MS. ALVAREZ: We can take a

5 two-minute --

6 THE VIDEOGRAPHER: The time is 2:26

7 p.m. We are going off the record.

8 (Recess)

9 THE VIDEOGRAPHER: This begins media
10 unit number four. The time is 2:40 p.m. and we
11 are back on the record.

12 BY MS. ALVAREZ:

13 Q. Dr. Marsoner, Lehman Brothers Holdings
14 Inc. filed for bankruptcy in September 15, 2008,
15 correct?

16 It was a very public filing, right,
17 the largest in history?

18 So you were aware when Lehman Brothers
19 Holdings filed for bankruptcy?

20 A. I was very aware when Lehman Brothers
21 Holdings Inc. filed for bankruptcy.

22 Q. You didn't file a claim against Lehman
23 Brothers Holdings Inc. by the bar date, correct?

24 A. I did not even know that a bar date
25 existed under US bankruptcy law. Under UK

Dr. Thomas Marsoner - December 15, 2015

Page 129

1 MARSONER

2 bankruptcy law, LBEL we just received the new 4
3 billion Euro claim two weeks ago.

4 Q. So you didn't know a bar date existed
5 in the US?

6 A. No, I did not. I had never had any
7 dealings with US bankruptcy law before.

8 Q. Okay.

9 MS. ALVAREZ: We are going to mark a
10 document as an exhibit. Mark this as Exhibit
11 12.

12 (Marsoner Exhibit 12, Multipage
13 document entitled Lehman Brothers Europe Limited
14 - In Administration, Joint Administrators'
15 progress report for the period 23 September 2009
16 to 22 March 2010, dated 20 April 2010, and
17 bearing no Bates stamps, marked for
18 identification)

19 BY MS. ALVAREZ:

20 Q. This is a progress report filed by
21 Lehman Brothers Europe Limited in
22 administration. It says: Joint administrators'
23 progress report for the period September 23rd,
24 2009, to March 22, 2010, and the date of the
25 report is April 20, 2010.

Dr. Thomas Marsoner - December 15, 2015

Page 130

1 MARSONER

2 Have you seen this report before?

3 A. I do not know.

4 Q. You testified earlier that you were on
5 the Creditors Committee of Lehman Brothers
6 Europe, correct?

7 A. That is correct, yes.

8 Q. In fact, if you look at page 2 of the
9 report, you are identified here as a member of
10 the Creditors Committee of Lehman Brothers
11 Europe.

12 Do you see that?

13 A. That is correct, yes, I can see that.

14 Q. If we flip to page 4, under
15 intercompany debtors, it states in a bullet
16 point: Submitted direct and guaranteed claims
17 into the estate of Lehman Brothers Holdings
18 Inc., totaling 1.4 billion by the prescribed bar
19 date.

20 Do you see that?

21 A. I can see that now, yes.

22 Q. So at the time, Lehman Brothers Europe
23 Limited had submitted a claim in LBHI's
24 bankruptcy by the bar date, correct?

25 A. That is what is written here. I would

Dr. Thomas Marsoner - December 15, 2015

Page 131

1 MARSONER

2 not have understood the word "bar date."

3 Q. Was this discussed -- was the bar date
4 discussed among the Creditors Committee?

5 A. Absolutely not. I was -- this has
6 come up once before and I actually circulated
7 the minutes of the one Creditors Committee
8 meeting that took place during that first year
9 as I now know, and those minutes very clearly
10 show that nothing remotely approaching or
11 resembling a US bar date was discussed.

12 Q. How involved were you in the Creditors
13 Committee?

14 A. In the Creditors Committee at Lehman
15 Brothers Europe Limited I was very much
16 involved, yes. The focus of our work at the
17 time was to compensate PwC. I was very involved
18 in the negotiation to compensate PwC. I came up
19 with the idea of paying them a success fee which
20 has worked well for Lehman Brothers Europe
21 Limited, I believe.

22 And the other big topic we discussed
23 at the time was a relatively large pool of
24 assets that was sitting at JPMorgan, and it
25 wasn't entirely clear which Lehman entity had

Dr. Thomas Marsoner - December 15, 2015

Page 132

1 MARSONER

2 the best claim on that.

3 Q. Now, \$1.4 billion is a significant
4 amount, significant claim that Lehman Brothers
5 Europe had against Lehman Brothers Holdings
6 Inc., correct?

7 A. Not necessarily. I mean, this is a
8 600 billion bankruptcy, and to this day,
9 literally to this day 10 billion tactical claims
10 are filed by one company on the other company
11 and back again. That was not the work of the
12 committee, that was the work of the
13 administrator.

14 Q. So the committee had no -- the
15 Creditors Committee had no interests in whether
16 the administrator filed a claim against Lehman
17 Brothers Holdings Inc.?

18 MR. VAN TOL: Could I have that read
19 back, please?

20 (Question read)

21 MR. VAN TOL: Object to the form to
22 the extent you are asking this witness to
23 testify about what an entire committee thought.

24 You may answer.

25 A. It was absolutely not the focus of my

Dr. Thomas Marsoner - December 15, 2015

Page 133

1 MARSONER

2 work at the time on the committee. I told you
3 what the two focus areas were, compensating PwC
4 and finding out where the famous account 28
5 JPMorgan pledge matter stood. I was totally
6 focused on that.

7 What went on between LBEL and the US
8 back and forth I simply do not remember. It was
9 not anything I focused on at the time.

10 Q. Did you review these progress reports
11 that were put out by Lehman Brothers Europe?

12 A. The part that I reviewed was always
13 the last page.

14 Q. So you only reviewed the last page?

15 A. There is a lot of boilerplate in the
16 earlier pages that for the non-bankruptcy lawyer
17 and the nonpracticing lawyer are relatively
18 dark. Were then and are now.

19 Q. So you have never seen this before?

20 MR. VAN TOL: Objection, asked and
21 answered.

22 A. I think my most accurate answer which
23 I believe I have given before is the one that if
24 I did see it -- and I do not recall seeing this
25 paragraph at all -- if I had seen it, I

Dr. Thomas Marsoner - December 15, 2015

Page 134

1 MARSONER

2 certainly wouldn't have understood it. I did
3 not know what the prescribed bar date meant.

4 Q. You never had discussions while you
5 were on the Creditors Committee about getting in
6 a claim at Lehman Brothers Holdings by a
7 prescribed deadline?

8 A. Absolutely not. Absolutely not. As I
9 tried to say, it is a concept that is alien to
10 UK bankruptcy law.

11 Q. You filed a claim against Lehman
12 Brothers Inc., correct?

13 A. I presume that you are referring to my
14 currency collar, and in that context that is
15 correct, yes.

16 Q. And that claim you filed by the bar
17 date?

18 A. I have no idea when I filed it, and
19 whether there was or wasn't a bar date I do not
20 recall. The substance of this matter was that
21 it was a \$5 million currency collar where I had
22 money on a margin account and where there was a
23 risk that the collar would expire against me.

24 And so I was trying to make -- I was
25 trying to get a hundred thousand dollars over

Dr. Thomas Marsoner - December 15, 2015

Page 135

1 MARSONER

2 there that was -- that was sitting in this
3 margin account back. That's when I filed a
4 claim.

5 Q. Were you represented by counsel or did
6 you file that on your own?

7 A. I filed that on my own. I was sent
8 paperwork. This was relatively simple. I did
9 involve counsel in that matter once, my Austrian
10 counsel, because I received a phone call at some
11 point from somebody at Lehman. Basically I
12 think that was after the expiration of the
13 collar. I believe it had expired \$200,000 or so
14 in the money against me. And there somebody
15 called me, I referred the matter to my Austrian
16 counsel who I think then wrote a personal letter
17 back.

18 Q. Did you receive a bar date notice from
19 Lehman Brothers Inc.?

20 A. I do not recall seeing a bar date
21 notice ever until my first conversations with
22 Hogan Lovells where I asked them to show me this
23 piece of paper. I looked at it and it has very
24 ugly, very big disclosure language at the bottom
25 that I have absolutely never seen before.

Dr. Thomas Marsoner - December 15, 2015

Page 136

1 MARSONER

2 Q. How did you find that form?

3 A. These gentlemen gave it to me.

4 Q. In connection with your LBI claim,
5 your claim against the --

6 A. Yeah, here, I was looking at --

7 MR. VAN TOL: Object to the form.

8 THE WITNESS: Sorry.

9 MR. VAN TOL: Repeat that. I think
10 you are getting confused.

11 Repeat that question, please.

12 MS. ALVAREZ: Just to clarify, he was
13 pointing to his attorneys. I don't know if
14 that's clear for the record.

15 (Record read).

16 MR. VAN TOL: Okay.

17 BY MS. ALVAREZ:

18 Q. How did you find the proof of claim
19 form that you submitted in LBI's case, the
20 actual proof of claim form?

21 A. LBEL.

22 Q. I'm sorry, Lehman Brothers Inc.?

23 THE WITNESS: Again, I'm sorry, this
24 is -- are we somewhere in attorney-client
25 privilege land where I should not digress here?

Dr. Thomas Marsoner - December 15, 2015

Page 137

1 MARSONER

2 MR. VAN TOL: If you are just
3 testifying about where you got a form you can
4 say, but don't divulge any advice you were given
5 about such a form.

6 A. I believe so -- forgive me, this is
7 alien territory for me. Obviously on the -- on
8 the US claim, as one would expect, I have relied
9 on my US attorneys.

10 Is that something I can say?

11 Q. Sure. I'm confused because you
12 testified that you handled this claim on your
13 own, that you did it yourself.

14 A. No, no, that was the previous one, the
15 one with the currency collar. There I was
16 sent -- I mean, this came in the mail in the
17 currency, because very easy to fill in.

18 MR. VAN TOL: That's why I asked the
19 questions read back. We have got our entities
20 messed up between LBI and LCC and others.

21 MS. ALVAREZ: Okay.

22 MR. VAN TOL: This firm did not
23 represent Dr. Marsoner in connection with this
24 currency collar claim.

25 MS. ALVAREZ: Okay.

Dr. Thomas Marsoner - December 15, 2015

Page 138

1 MARSONER

2 THE WITNESS: With my hundred thousand
3 dollar margin account balance, that --

4 MS. ALVAREZ: Got it.

5 THE WITNESS: That I did myself.

6 BY MS. ALVAREZ:

7 Q. And that claim was against which
8 entity?

9 A. I believe it was against LBCC.

10 Q. Okay. Here we go.

11 So, then, you were represented by
12 counsel in connection with your claim against
13 Lehman Brothers Inc.?

14 A. No, I was not. I was not. I thought
15 that I had filled in the right piece of paper to
16 get my margin account money back from LBCC. The
17 reason I thought that -- whether the paperwork I
18 filled in at the time was headed LBCC or LB Inc.
19 was immaterial because my broker with whom I
20 entered into this LBCC currency collar was LB
21 Inc.

22 Q. Okay. So, then, with regard to LBCC,
23 did you receive a bar date notice from LBCC?

24 A. I don't think I ever got anything from
25 LBCC which is why I filled in the LBI paperwork

Dr. Thomas Marsoner - December 15, 2015

Page 139

1 MARSONER

2 to get my LBCC margin balance back.

3 Q. I want to ask you about a couple of
4 addresses.

5 Do you recognize the address -- and I
6 may not pronounce these right, I probably
7 won't -- Casa Andreas 16 Trig Sant Adrija Lija
8 BLZ10 Morocco.

9 Do you recognize that address?

10 A. Well, absolutely not. That is
11 definitely a nonexisting address because it has
12 elements of the Maltese address that is on my
13 '04 agreement, but it obviously also has the
14 country Morocco that is relatively far away from
15 Malta.

16 Q. So let's focus on the Maltese address.
17 What is that an address to?

18 MR. VAN TOL: Objection, asked and
19 answered. You may answer again.

20 A. That's the address of the house of a
21 friend of mine in Malta.

22 Q. Okay.

23 A. Where I happened to be once in the '04
24 time period.

25 Q. Do you know if a bar date notice

Dr. Thomas Marsoner - December 15, 2015

Page 140

1 MARSONER

2 arrived at that house?

3 A. I never got anything from that house.

4 I used, as I described to you, as a non-UK,
5 non-Austrian address for pure tax cosmetics
6 purposes.

7 Q. Does your friend still live in that
8 house?

9 A. I do not know. I do not know if he
10 still owns it.

11 Q. Do you recognize the address Casa
12 Peliganos, Costa Keretas? Do you recognize that
13 as an address?

14 A. That I recognize. That is a house
15 that at one point I had rented in Mexico for a
16 three-week family holiday.

17 Q. Did you use that address on any
18 contracts with Lehman Brothers?

19 A. I'm not sure that I used it on any
20 contract, but I would assume that I or rather my
21 secretary must have put it on an invoice or two
22 that I probably sent -- sent to Lehman, where,
23 again, for tax cosmetic purposes I preferred a
24 non-UK, non-Austrian address.

25 Q. Okay. What about the address Casa

Dr. Thomas Marsoner - December 15, 2015

Page 141

1 MARSONER

2 Carrion Parco, San Giacomo?

3 Do you recognize that?

4 A. That's the address of a holiday flat
5 of my -- then of my father's, only Garda in
6 northern Italy.

7 Q. Did you ever stay there?

8 A. I occasionally stayed there for
9 periods never exceeding a few days and only
10 during the summer. No mail is received there.
11 There is not even a mailbox or a -- there is not
12 even a sort of a slit in the door where one
13 could put mail in because it would be pointless.

14 Q. Did you ever include that address on
15 any contracts with Lehman Brothers?

16 A. I do not believe I put that on a
17 contract but, again, I may well have put it on
18 an invoice.

19 If I was in the general area at the
20 time, I might well have told my assistant for
21 the often enough discussed tax cosmetic purposes
22 to put that address on the invoice.

23 Q. Does your father still own that flat?

24 A. My father had two flats in that house
25 which a year ago he gave to his two sons.

Dr. Thomas Marsoner - December 15, 2015

Page 142

1 MARSONER

2 Q. Are you one of those sons?

3 A. Yes.

4 Q. Who lives there now?

5 A. Nobody lives there now. Those are
6 still holiday flats that get used in the summer
7 occasionally. In my case practically not
8 because I have a summer house on an Austrian
9 lake, Lake Millstatt where my wife is from, and
10 so the flat of those two flats that I own
11 generally gets used for guests that my brother
12 has.

13 Q. When did your father give you that
14 flat?

15 A. About a year ago.

16 Q. So in 2009 it still belonged to your
17 father?

18 A. Absolutely.

19 Q. Do you know if you ever received a bar
20 date notice at that address?

21 A. I have never seen any mail received at
22 either of those flats.

23 MS. ALVAREZ: I think this might be a
24 good time for a break.

25 THE VIDEOGRAPHER: The time is 3:03

Dr. Thomas Marsoner - December 15, 2015

Page 143

1 MARSONER

2 p.m. We are going off the record.

3 (Recess)

4 THE VIDEOGRAPHER: The time is 3:32

5 p.m. We are back on the record.

6 BY MS. ALVAREZ:

7 Q. Dr. Marsoner, I would like to turn
8 back to what's been marked as Exhibit 10. This
9 is the e-mail string between you and Bruce
10 Matthews?

11 A. Yeah.

12 Q. You testified earlier that you had
13 e-mailed Bruce Matthews about Formula One
14 because he was at A&M?

15 A. Yes.

16 Q. You also testified that he was on the
17 Creditors Committee of Lehman Brothers Europe,
18 correct?

19 A. Europe Limited, yes.

20 Q. In what capacity did he serve on the
21 Creditors Committee?

22 A. I presume that he represented one of
23 the US entities, but I'm not certain that it was
24 that. The reason you see me hesitate is that
25 the cast of characters from A&M has changed over

Dr. Thomas Marsoner - December 15, 2015

Page 144

1 MARSONER

2 the years. Bruce Matthews has been out of the
3 picture for quite a few years now and -- so I
4 assume it was one of the US entities, but I
5 cannot be certain of that.

6 Q. So you e-mailed Bruce Matthews -- you
7 sent him this e-mail in Exhibit 10 because you
8 believed he was on the Creditors Committee
9 representing one of the US entities?

10 A. I knew he was on the Creditors
11 Committee because he and I coordinated carefully
12 around the question of how do we compensate PwC.
13 We've developed a good working relationship with
14 each other on that committee.

15 And as an Alvarez & Marsal person, as
16 an administrator to Lehman, I thought there had
17 to be somebody at his shop involved in or
18 overseeing the Formula One investment. I
19 couldn't be certain then that that was a US
20 person or not a US person. I guess the balance
21 of probabilities was that it would be a US
22 person, but I could certainly not be certain of
23 that.

24 Q. What I'm trying to understand is why
25 did you think there was someone at his shop

Dr. Thomas Marsoner - December 15, 2015

Page 145

1 MARSONER

2 watching over this investment?

3 A. Because there were two shops that were
4 overlooking Lehman. In Europe it was PwC.
5 Pretty sure that I would have asked the same
6 question to one of the PwC people who told me
7 not us, so since there were only two
8 administrators to my then knowledge involved, I
9 assumed it had to be somewhere in the Alvarez &
10 Marsal ambit.

11 MS. ALVAREZ: I think we can mark the
12 next exhibit. This is labeled Marsoner 32 to
13 41. I believe this is Exhibit 13.

14 (Marsoner Exhibit 13, Multipage
15 document bearing on the first page an e-mail
16 from Tom Bernard to Thomas Marsoner, dated
17 December 12, 2014, and Bates stamped
18 Marsoner00000032 through 41, marked for
19 identification)

20 BY MS. ALVAREZ:

21 Q. Exhibit 13 is labeled Marsoner 32
22 through Marsoner 41. If you take a look, it's
23 an e-mail string between you and Tom Bernard.

24 Now, there are various e-mails here,
25 some may be in order, some may be out of order,

Dr. Thomas Marsoner - December 15, 2015

Page 146

1 MARSONER

2 it's a little bit confusing, but what I would
3 like to discuss with you first is on Marsoner
4 34.

5 Here this is an e-mail halfway --
6 about the middle of the page is an e-mail from
7 you to Tom Bernard dated December 7, 2014, and
8 the subject line is shared history.

9 Do you see that?

10 A. Yes, I see that.

11 Q. You say in the -- I'll say third
12 paragraph in the middle of the paragraph: I'd
13 love to catch up with you at your convenience
14 for half an hour at some point in the next few
15 months primarily to chat about Formula One
16 wherever convenient for you, New York, Rockies
17 or London.

18 Do you see that?

19 A. I see that, yes.

20 Q. What with regard to Formula One did
21 you want to discuss with Tom Bernard?

22 A. The Peter Sherratt allegation in the
23 e-mail that you shared with Peter Sherratt in
24 which he had written that Christian and Tom, Tom
25 Bernard, agreed with his notion that I had no

Dr. Thomas Marsoner - December 15, 2015

Page 147

1 MARSONER

2 claim.

3 Q. Were you able to schedule a meeting
4 with Tom Bernard?

5 A. No, I ended up only being able to
6 speak to him on the phone and exchange a few
7 e-mails, all of which you have.

8 Q. What did you discuss on the telephone
9 with him?

10 A. Very much -- I told him very openly
11 that -- what I wrote here, that I was a little
12 bit troubled and -- so it -- did he really say
13 that he thought that I had no claim, and his
14 response was that he, of course, did not say
15 that. He knew I was a paid advisor, he didn't
16 know more, he didn't know less was essentially
17 the substance of it.

18 Q. Did he say anything about whether he
19 thought you should be paid for Formula One?

20 A. You know, ultimately, as you know, I
21 gave him a sort of suggestion of what he could
22 write, and ultimately he wrote something that
23 is -- you know, that I would characterize as
24 being middle of the road along the lines of the
25 Peter Sherratt allegation that Bernard agrees

Dr. Thomas Marsoner - December 15, 2015

Page 148

1 MARSONER

2 that I should not be paid, certainly a notion
3 that he did not share. But at the same time he
4 pointed out to me in those conversations that
5 while he was aware of the fact that I was a paid
6 advisor, he was not in charge of the Lehman
7 relationship with me.

8 Q. Okay. Just looking through these
9 e-mails, if you look at Marsoner 33 there is an
10 e-mail from you to Tom Bernard dated December 9,
11 2014, and it says: In preparation for our call
12 later this week, please find enclosed my best
13 estimate of the 1.5 billion or so F1 profit that
14 I think we both materially contributed to.

15 Do you see that?

16 A. Yes, I see that.

17 Q. Was this -- did you send this e-mail
18 before you had that call with him that you
19 just -- the call that you just described?

20 A. I believe so, yes. I believe so.

21 Q. You say: Please find enclosed my best
22 estimate.

23 What was attached to this e-mail?

24 A. The landscape analysis that you have
25 that shows that before bankruptcy, Lehman had

Dr. Thomas Marsoner - December 15, 2015

Page 149

1 MARSONER

2 put in 300, got out 312, and then since
3 bankruptcy Lehman made about a billion five of
4 which a little less than half in cash and a
5 little more than half fair value of the stock.

6 Q. When you spoke to Bernard, did you
7 discuss that landscape analysis?

8 A. You see the -- his e-mail up there in
9 which he responds. I certainly -- I certainly
10 would have explained it to him, yes.

11 Q. What did he say about it?

12 A. Just factual, just what it says, just
13 what I just said in terms of what the net firm
14 revenues would Lehman made out of F1 most
15 probably amounted to by now.

16 Q. In this e-mail, and I'm referring to
17 the December 9 e-mail from you to Tom Bernard
18 that we were just talking about, you say: Since
19 you were in many ways even closer than me to the
20 situation, you may have better information.

21 What did you mean by that statement?

22 A. You know, I wanted to establish a
23 factual base for the discussion of what has
24 happened since he and I last spoke and -- and
25 particularly after '05, both Pignatti and my

Dr. Thomas Marsoner - December 15, 2015

Page 150

1 MARSONER

2 involvement had been very slight.

3 I assumed he might still know more
4 about it, but no particular agenda, just
5 establishing -- establishing a factual base on
6 which to discuss the matter.

7 Q. And then Tom Bernard responds on
8 September 12: Hi, Thomas, this is way more
9 information than I have.

10 What is Tom Bernard referring to
11 there?

12 A. The landscape analysis. Particularly
13 he did not have the '012 numbers which he had
14 moved out of that whole thing since he got fired
15 in '09. What I had gleaned from public sources
16 had happened in '012 he was not actively aware.

17 MR. VAN TOL: For the record, I think
18 you said September. It's December 2014.

19 MS. ALVAREZ: Okay. Yeah, I see that.

20 Q. So during this time when you were
21 exchanging e-mails with Tom Bernard and you had
22 a telephone conversation with him, did he say
23 anything about Lehman agreeing to compensate you
24 10 percent of revenues for F1?

25 A. Tom Bernard very clearly made the

Dr. Thomas Marsoner - December 15, 2015

Page 151

1

MARSONER

2

point that he knew I was a paid advisor, he knew

3

that I had pertinent and useful F1 knowledge,

4

but my relationship with the firm had never been

5

his business.

6

I think he has been very clear on

7

that, certainly throughout the phone

8

conversations that I had with him, and I think

9

that's also what the letter that he kindly

10

ultimately submitted says.

11

Q. So he wouldn't know -- are you saying

12

he wouldn't know whether Lehman had agreed to

13

compensate you for F1?

14

A. He knew -- he always told me he knew I

15

was a paid advisor and he knew that my F1

16

knowledge was very pertinent, and he actually --

17

he very kindly repeated essentially what he had

18

written in the e-mail at the time, both to me

19

and internally to the team that worked on it.

20

But beyond that, he said,

21

understandably, that he was not involved in the

22

details of the Lehman relationship with me.

23

MS. ALVAREZ: Let's mark the next

24

exhibit, and this is Marsoner 42 to 43.

25

Dr. Thomas Marsoner - December 15, 2015

Page 152

1 MARSONER

2 (Marsoner Exhibit 14, Single-page
3 e-mail from Tom Bernard to Thomas Marsoner,
4 dated February 3, 2015, with single-page
5 attachment, Bates stamped Marsoner00000042 and
6 43, marked for identification)

7 BY MS. ALVAREZ:

8 Q. This is an e-mail from Tom Bernard to
9 Tom Marsoner dated February 3rd, 2014.

10 Attached to the e-mail appears to be a
11 draft letter to the Southern District of New
12 York Bankruptcy Court.

13 Do you see that?

14 A. Yeah, I see that.

15 Q. Is this a copy of the letter that you
16 had prepared for Tom Bernard?

17 A. I don't know. I mean, I certainly
18 remember making a convenience draft available to
19 him. I mean, it was very kind of him to take
20 the time to talk to me in the first place, so I
21 tried to lighten his load as much as I could.

22 And just like in all other cases, I
23 told him no pride of authorship, please write
24 whatever you feel correctly reflects reality.
25 What exactly he did or whether there were more

Dr. Thomas Marsoner - December 15, 2015

Page 153

1 MARSONER

2 than one draft, I do not recall.

3 Q. Do you recall if he made any he edits
4 to the draft that you sent him?

5 A. I assume he would made edits, yes.

6 Q. Did you have a conversation with him
7 about the edits he was making?

8 A. I may well have, but as in all cases
9 under our e-mails, I think from me to Pignatti,
10 Magnoni, where I always explicitly said please
11 write only what you are comfortable with, the
12 decision was always entirely that of the person
13 who wrote it.

14 Q. What did he say about the edits he was
15 making to the letter?

16 A. I don't remember what he said about
17 any specifics.

18 Q. If you look at this e-mail from Tom
19 Bernard to you, the subject line reads: Does
20 this work?

21 Do you know what he's referring to?

22 A. Yeah, whether that would be a helpful
23 statement to counteract the, as he agreed,
24 incorrect claim by Sherratt that Tom agreed that
25 I deserved nothing.

Dr. Thomas Marsoner - December 15, 2015

Page 154

1 MARSONER

2 Q. Did you have a follow-up conversation
3 with Tom Bernard after he sent you this draft?

4 A. I -- I do not remember that detail.
5 The draft that ultimately he signed and sent in
6 was the one he was comfortable with. How
7 exactly he came up with that and whether we
8 discussed it once or twice, I do not recollect.

9 In some ways, to be honest, most
10 urgent thing for me was to really have the --
11 that huge sentence on the record above his
12 signature. E-mails are e-mails, but this is a
13 real letter in which he specifically says that
14 he wrote that.

15 I also got a chuckle out of the fact
16 that the spelling of McLaren has remained the
17 same since the outset, so in many ways my -- my
18 main objective here -- looking for fairness
19 here, and for Tom Bernard to really repeat that
20 very material e-mail exchange in a letter served
21 the main purpose that I was after.

22 Q. Let's take a look back at Exhibit 13.

23 If you look at Marsoner 36 --

24 A. I'm sorry?

25 Q. Marsoner 36.

Dr. Thomas Marsoner - December 15, 2015

Page 155

1 MARSONER

2 A. 36?

3 Q. Yes. If you look at the e-mail in the
4 center of the page, it's an e-mail from you to
5 Tom Bernard dated February 2nd, 2015.

6 Do you see that?

7 A. Hm-hmm.

8 Q. You say to Tom Bernard: Because your
9 text ("When the F1 team at Lehman learned of
10 BLB's sale of its stake to CVC, our immediate
11 unanimous reaction was that the price was far
12 too low") otherwise reads like I had nothing to
13 do with realization that it was too low. In the
14 proper sequencing it is what it is, material.

15 Can you explain what you meant by
16 this?

17 A. I think what I meant by this has
18 become completely clear in discovery when your
19 client produced the e-mail in which Tom Bernard
20 turned around and sent my e-mail to the entire
21 team at the point in time when the price was not
22 known and said: If true, what Thomas is saying
23 is huge.

24 So in the proper sequencing that I was
25 looking for here, and which he kindly agreed to

Dr. Thomas Marsoner - December 15, 2015

Page 156

1 MARSONER

2 reflect in his letter, it was clear that my call
3 was the first. He correctly diagnosed it as
4 huge. He told the team that he is almost fully
5 resolved to stay in, and when they then also saw
6 the press, it was easy to reach the decision to
7 stay in.

8 So this was a factual comment on the
9 correct sequencing and he kindly agreed with the
10 factual comment.

11 Q. And this text in parenthesis was --
12 sentence that Tom Bernard had added to the draft
13 letter?

14 A. I think that's -- yeah. I would
15 assume that that is -- that that is something
16 that he drafted, yes.

17 Q. Do you know if that sentence remained
18 in the final letter?

19 A. I believe so, I believe it's at the
20 end.

21 Q. As you know, Vittorio Pignatti and
22 Ruggero Magnoni also submitted letters to the
23 bankruptcy court, correct?

24 A. Yeah.

25 Q. They also made themselves available to

Dr. Thomas Marsoner - December 15, 2015

Page 157

1 MARSONER

2 be deposed in London, correct?

3 A. Yes, correct.

4 Q. Did you ask Tom Bernard whether he was
5 willing to be deposed?

6 A. Tom Bernard in my phone conversations
7 with him said that if there was any way he could
8 be spared a deposition he would be most
9 grateful.

10 Q. Did you ask -- despite that statement,
11 did you ask him whether he would make himself
12 available?

13 A. No. No, in every single case, when
14 people either gave me no answer or told me
15 please leave me alone with this even though you
16 are right, as in the case of Christian Meissner,
17 I respected their wishes. I mean, it's very
18 kind of Tom to even have spent the time to
19 write -- to write the letter he wrote. To
20 further impose upon him I wouldn't have
21 thought -- I wouldn't have thought right.

22 MS. ALVAREZ: Well, let's take a look
23 at -- we will mark this Exhibit 15.

24

25

Dr. Thomas Marsoner - December 15, 2015

Page 158

1

MARSONER

2

(Marsoner Exhibit 15, Two-page e-mail

3

chain bearing at the top of the first page an

4

e-mail from Christian Meissner to Thomas

5

Marsoner, dated January 28, 2015, with

6

single-page attachment, Bates stamped

7

Marsoner000000624 through 626, marked for

8

identification)

9

BY MS. ALVAREZ:

10

Q. I'll need your help with this one

11

because it's in German.

12

A. Sure.

13

Q. So Exhibit 15 is marked on the bottom

14

right-hand side Marsoner 624 to 626. It is an

15

e-mail string between you and Christian Meissner

16

in January of 2015.

17

Do you see that?

18

A. Yes, I see that.

19

Q. We have already discussed who

20

Christian Meissner is so we won't go there

21

again.

22

Why did you reach out to -- it appears

23

attached to this e-mail is a draft letter to the

24

court to be signed by Christian Meissner.

25

Is this a draft letter that you sent

Dr. Thomas Marsoner - December 15, 2015

Page 159

1 MARSONER

2 to Mr. Meissner?

3 A. Yes, absolutely.

4 Q. Why did you send him this draft?

5 A. Because Peter Sherratt in the e-mail
6 that you made him read out during his deposition
7 had made the claim that Christian Meissner and
8 Tom Bernard agreed with him that I deserved
9 nothing.

10 Christian is a good friend of mine.
11 Very first thing I did when I read that e-mail,
12 somewhat in shock, I picked up the phone and
13 said: Christian, guess what e-mail I just got?
14 What happened?

15 So he said: Ah, yes, there were --
16 there was a call from Linklaters, and I forget,
17 I sat down with them or I got on the phone with
18 them, and I told them that the F1 matter
19 predated my aegis. "Meine agide" was the German
20 exact word. So it predates my time in charge of
21 European investment banking.

22 He then went on to say that Linklaters
23 tried in various different ways to get him to
24 say that him not knowing about it must mean that
25 Marsoner has no claim, to which Christian told

Dr. Thomas Marsoner - December 15, 2015

Page 160

1 MARSONER

2 me very specifically that he told Linklaters
3 very specifically no, that is not what it means.
4 It means it predates my time, and I was simply
5 not involved with Marsoner on F1 matters.

6 So that my take on the e-mail by Peter
7 Sherratt to me is that in the case of Meissner
8 for sure it is a straight misrepresentation.

9 Q. Okay.

10 A. And that straight misrepresentation I
11 wanted to get to the bottom of and to crystalize
12 matters with Christian. This is the -- this is
13 the correspondence that followed between
14 Christian and me. And I believe I've already
15 said what the main point was.

16 Q. Well, if you look at Marsoner 625, the
17 e-mail is from you to Christian Meissner dated
18 January 14th, 2015?

19 A. Yeah.

20 Q. It says -- it starts off: Further to
21 my voice mail.

22 A. Yes.

23 Q. What did that voice mail concern?

24 A. I believe this matter.

25 Q. What did you say in the voice mail?

Dr. Thomas Marsoner - December 15, 2015

Page 161

1 MARSONER

2 A. A shorter version of what I wrote
3 here.

4 Q. Can you explain it to me?

5 A. Ah, sure. Should I try to --

6 Q. You don't need to translate it word
7 for word, I just want to get a general
8 understanding of what the voice mail was about.

9 A. Basically -- I am basically telling
10 him here I have settled the UK case amicably,
11 relatively cheaply. Main argument, as I said
12 earlier today, that the 1.5 billion had accrued
13 in the US and the UK estate cannot pay out
14 revenues in the US.

15 But then I realized that I had a case
16 in the US, particularly because the claims bar
17 date of end 2002 has never been served upon me.
18 In the UK proceedings, the other side has
19 bothered you and Tom Bernard and then passed on
20 your statements very selectively in an effort to
21 avoid that this time I'd like to ask you to
22 please have a look at the enclosed draft letter,
23 corrected where and however you think necessary,
24 and to please then send me a scanned version of
25 your final version.

Dr. Thomas Marsoner - December 15, 2015

Page 162

1 MARSONER

2 I would then pass it on to the New
3 York bankruptcy court. I have well understood
4 that it is your understandable preference to
5 have as little as possible to do with any
6 litigation, but against the background, how much
7 your statement, as you recall, was falsified by
8 the other side, I think that you might minimize
9 your involvement by making very clear from the
10 beginning what you were not dealing with.
11 Additionally you would help me with this and I
12 would be very grateful.

13 In case you have any interest I would,
14 of course, happily send you my motion to the New
15 York bankruptcy court.

16 Q. Thank you.

17 A. That's my best effort at an English
18 translation of my German.

19 Q. So you mentioned that his statements
20 were passed on, I think you said selectively in
21 the UK proceedings.

22 What did you mean by that?

23 A. I beg your pardon?

24 Q. At one point -- maybe we can look at
25 your exact language -- you said in the UK

Dr. Thomas Marsoner - December 15, 2015

Page 163

1 MARSONER

2 proceedings the other side has bothered you and
3 Tom Bernard, and then passed on your statements
4 very selectively?

5 A. Yes.

6 Q. What did you mean by that?

7 A. That Peter Sherratt was -- either
8 Peter Sherratt or Linklaters were
9 misrepresenting what Tom Bernard and Christian
10 Meissner had said. I just worded it politely
11 and carefully.

12 Q. Okay. I see that Christian Meissner
13 responded here by e-mail, but -- did you have a
14 conversation with him about this on the phone?

15 A. Not on this occasion, no, it was when
16 I first got the Sherratt e-mail with the
17 misrepresentation, then he and I had a
18 conversation on the phone. I was a little
19 upset, but he was very clear. And this was
20 essentially to crystalize matters one more time.

21 And then he says: Thank you for the
22 e-mail, I'm sorry that we have not spoken yet.
23 Davos -- this annual bigwig gathering -- Davos
24 and yearend bonus process are a difficult
25 combination.

Dr. Thomas Marsoner - December 15, 2015

Page 164

1 MARSONER

2 Then he says the decisive sentence:

3 To that letter, although it is really
4 unproblematic, I would rather not get involved.

5 I do not believe that I want to be on the radar
6 screen of a US court to Lehman topics, and don't
7 want to sort of essentially be bothered with
8 process and depositions, could lead into other
9 topics I have had in other contexts.

10 He implies unhappy experiences with
11 Lehman topics and wants to gain as much distance
12 to Lehman as possible. I hope you understand
13 that. Happy to talk. Cordial regards,
14 Christian.

15 Q. Okay. Thank you.

16 Did you respond to this e-mail?

17 A. I believe I did. I think I told him:
18 Perfectly okay. Just if you can't testify for
19 me, then please stay out of it altogether, or
20 something to that effect.

21 Q. Okay.

22 DISCOVERY REQUEST

23 -----

24 MS. ALVAREZ: I don't believe we have
25 this e-mail, so to the extent we don't have it

Dr. Thomas Marsoner - December 15, 2015

Page 165

1 MARSONER

2 we call for its production.

3 BY MS. ALVAREZ:

4 Q. Did you have a conversation with
5 Christian Meissner about F1 after January 28,
6 2015?

7 A. I do not think so. And this is an
8 e-mail that I may have only composed in my head.
9 I'll look it up. Or I may have composed it and
10 decided not to send it. I'll look for it. I'll
11 look for it. But the substance is he says this
12 letter is unproblematic, and I certainly -- when
13 he made clear he did not want to get involved, I
14 didn't bother him with it any more.

15 DISCOVERY REQUEST

16

17 MS. ALVAREZ: I will say that even if
18 it's a draft e-mail that's sitting on your
19 computer, we would call for its production.

20 THE WITNESS: I will absolutely look
21 for it.

22 MS. ALVAREZ: Okay. Thank you.

23 The next document I would like to mark
24 is the letter that Pignatti submitted to the
25 court. This we'll mark as Exhibit 16.

Dr. Thomas Marsoner - December 15, 2015

Page 166

1 MARSONER

2 (Marsoner Exhibit 16, Two-page letter
3 from Vittorio Pignatti Morano to Judge Chapman,
4 United States Bankruptcy Court, Southern
5 District of New York, dated January 7, 2015, and
6 bearing no Bates stamps, marked for
7 identification)

8 BY MS. ALVAREZ:

9 Q. Is this the letter that Vittorio
10 Pignatti submitted to the bankruptcy court that
11 you referenced earlier?

12 A. I believe so, yes.

13 Q. How did it come to be that Mr.
14 Pignatti submitted a letter to the court?

15 A. I asked him to please do so. He had
16 already submitted one in the UK proceeding.

17 Q. Did you prepare this letter?

18 A. I, as in the two other cases, prepared
19 a convenience draft for him inviting him to mark
20 it up in whatever way he felt like it.

21 Q. And did he mark it up?

22 A. I believe he did, yes. I believe he
23 did.

24 Q. Do you recall what his edits were?

25 A. I do not remember the details of -- he

Dr. Thomas Marsoner - December 15, 2015

Page 167

1 MARSONER

2 was perfectly fine. The end product was, you
3 know, perfectly fine and totally supportive. I
4 was very happy with it.

5 Q. Do you recall how many drafts were
6 exchanged?

7 A. I believe that in the Pignatti case I
8 don't think there was -- there was an exchange.
9 I believe it took him a little bit to put pen to
10 paper, but what he then submitted he submitted,
11 and I do not believe that I commented on his
12 draft.

13 I can't be absolutely certain, but my
14 best recollection is that I gave him a
15 convenience copy, he marked it up however he
16 wanted to, and the end product was perfectly
17 fine and very supportive.

18 MS. ALVAREZ: We are going to mark
19 another document.

20 (Marsoner Exhibit 17, Multipage e-mail
21 chain bearing at the top of the first page an
22 e-mail from Vittorio Pignatti to Thomas
23 Marsoner, dated December 4, 2002, with multipage
24 attachment, Bates stamped Marsoner 00000008
25 through 31, marked for identification)

Dr. Thomas Marsoner - December 15, 2015

Page 168

1 MARSONER

2 BY MS. ALVAREZ:

3 Q. This document was produced by you, Dr.
4 Marsoner, and it's marked Marsoner 8 through
5 Marsoner 31. It is a compilation of e-mails
6 between you and Mr. Pignatti.

7 What I would like you to focus on is
8 if you turn to the top of Marsoner 20, it
9 actually starts on the way bottom of Marsoner 19
10 to the top of 20, and it is an e-mail from you
11 to Vittorio Pignatti with Ruggero Magnoni cc'd
12 dated January 14, 2015.

13 Do you see that?

14 A. Sorry, that is on 18 or 19?

15 Q. It starts on the bottom of 19?

16 A. Starts on the bottom of 19. Okay.

17 Q. You see how --

18 A. It's from me to Pignatti, cc Magnoni.

19 Q. Yeah, you got it.

20 A. Right?

21 Q. You got it.

22 A. Yeah.

23 Q. So in the very first paragraph you
24 inform Pignatti, you say: I have decided to
25 pursue a claim in respect of the LB F1 matters.

Dr. Thomas Marsoner - December 15, 2015

Page 169

1 MARSONER

2 Do you see that?

3 A. I see that, yes.

4 Q. Then in the second paragraph you
5 state: With reference to our discussions around
6 this, I would be very grateful if you could
7 please look at the draft letter attached, check
8 to confirm it reflects reality accurately, mark
9 it up wherever you think it might not and send a
10 scanned version back to me.

11 Do you see that?

12 A. Yes, I see that.

13 Q. When you say "with reference to our
14 discussions," what discussions are you referring
15 to?

16 A. I think I'm referring to discussions
17 with him all the way back to 2002. Pignatti and
18 I have had tons of discussions around F1
19 matters.

20 Q. Prior to sending him this e-mail, had
21 you informed him that you were pursuing a claim
22 with regard to F1?

23 A. For sure, because he kindly also wrote
24 the supported letter to the -- in the UK case.

25 Q. Prior to sending him this e-mail, had

Dr. Thomas Marsoner - December 15, 2015

Page 170

1 MARSONER

2 you informed him that you were pursuing a claim
3 against the US entities with regard to F1?

4 A. I do not know. I do not know whether
5 I -- I may well have called him ahead and left
6 him a voice mail.

7 Q. But you don't recall if you had that
8 conversation with him about it?

9 A. I absolutely do not recall whether I
10 had a conversation with him about it, no.

11 Q. You say in this e-mail that there is a
12 draft letter attached.

13 Was this the first time that you sent
14 him a draft letter regarding -- a draft letter
15 to be submitted to the bankruptcy court?

16 A. I just see on the page 19 resending as
17 discussed, so I would -- that was on the 28th of
18 January, so I would assume that whether the
19 draft was sent to me on the 14th of January
20 was with us such draft that I sent him.

21 Q. Do you have a copy of this draft, the
22 first draft that you sent him?

23 A. I have certainly given it together
24 with all other relevant correspondence to
25 counsel on or about August 1 as I now recall.

Dr. Thomas Marsoner - December 15, 2015

Page 171

1 MARSONER

2 Q. So to your knowledge, this draft was
3 produced to Lehman Brothers?

4 MR. VAN TOL: Object to the form.

5 Calls for knowledge he may not have.

6 BY MS. ALVAREZ:

7 Q. I said to your knowledge was it
8 produced to Lehman Brothers?

9 A. I have forwarded to my lawyers so that
10 they would forward it to Lehman Brothers, yes,
11 of course.

12 DISCOVERY REQUEST

13

14 MS. ALVAREZ: It's not clear to me
15 that we have this particular draft, so to the
16 extent we don't have it, we call for its
17 production.

18 BY MS. ALVAREZ:

19 Q. So, now, let's look at Pignatti's
20 response which is actually Marsoner 19, on
21 Marsoner 19. It is an e-mail from Pignatti to
22 you dated January 31, 2015.

23 Do you see -- do you see that?

24 A. I see that, yes. And I remember it.
25 I was a little bit shocked when I got it.

Dr. Thomas Marsoner - December 15, 2015

Page 172

1 MARSONER

2 Q. Okay. It states: Dear Thomas, I
3 can't sign, risking perjury, sign a statement
4 that presents facts that I was not involved with
5 like the matters related to the sale of CVC of
6 LB's stake in Formula One. People who were
7 involved have a different recollection and if
8 asked by the court will air it. Not sure if
9 there is much upside for you but I do see some
10 downside. Sorry. V.

11 What specifically did you find
12 shocking?

13 A. That he would think that I would even
14 dream of asking him to risk perjury.

15 Q. Did you have a further conversation
16 with him about what he meant by that?

17 A. Yeah, I made -- I mean, I made very
18 clear to him what I have always made very clear
19 that he should please only write what he really
20 remembered and what he felt comfortable with.
21 I'm absolutely certain that I cleared up his
22 misunderstanding that risking perjury was
23 anywhere in the realm of the possible or
24 desired.

25 Q. Did Pignatti send you a revised draft?

Dr. Thomas Marsoner - December 15, 2015

Page 173

1 MARSONER

2 A. This is a -- an e-mail by him to his
3 assistant on page number 20 where he instructs
4 his secretary to send -- to basically .pdf his
5 text which is down here, Dear Judge Chapman, all
6 the way to it was my understanding that Marsoner
7 would have been paid by Lehman Brothers for his
8 services concerning the F1 investment or I would
9 not have asked him to help.

10 He certainly did not elicit any
11 comments of mine on this text of his. He copied
12 me on his instruction to his secretary to .pdf
13 it and use his stamped signature.

14 So I made a suggestion. He reworded
15 it however he felt fit and kindly submitted it.

16 Q. Did you have a conversation with Mr.
17 Pignatti about the edits that he made to the
18 letter?

19 A. No. No. No. The letter is perfectly
20 fine.

21 MS. ALVAREZ: Let's take a look at
22 Marsoner 622 through 623.

23
24
25

Dr. Thomas Marsoner - December 15, 2015

Page 174

1 MARSONER

2 (Marsoner Exhibit 18, Two-page letter
3 from Vittorio Pignatti Morano to Judge Chapman,
4 United States Bankruptcy Court, Southern
5 District of New York, dated January 6, 2015,
6 Bates stamped Marsoner00000622 and 623, marked
7 for identification)

8 BY MS. ALVAREZ:

9 Q. I'll represent to you that this
10 document was produced by you very recently, I
11 believe it was November 24th after Mr. Pignatti
12 had already been deposed, so Lehman Brothers did
13 not have the opportunity to ask Mr. Pignatti
14 about this document.

15 To me, and you can tell me if I'm
16 right or not, but this looks like a draft letter
17 from Mr. Pignatti to the bankruptcy court
18 regarding your claim on F1.

19 Is that correct?

20 A. That is correct, yes.

21 Q. Do you know if this is the original
22 draft that you had sent to Mr. Pignatti?

23 A. I absolutely do not know it, but since
24 it is dated 6 January and the final letter is
25 dated 7 January, the conclusion that this is the

Dr. Thomas Marsoner - December 15, 2015

Page 175

1 MARSONER

2 prior version, and his text here on e-mail dated
3 7 January and there on letterhead dated 7
4 January, would be his version after he has made
5 whatever markups he saw fit.

6 Q. As I state, this was produced to us on
7 November 24th.

8 Had you searched for this letter prior
9 to November?

10 A. Yeah, not only searched for it, I gave
11 it to my lawyers, and then in August with a full
12 intention of it to be disclosed to you. I have
13 nothing to hide in my conversations with any of
14 the three people that submitted letters on my
15 behalf.

16 Q. Okay.

17 A. I find it very kind of them to have
18 taken the time and I gave them convenience
19 drafts so as to minimize the amount of time they
20 would have to spend.

21 Q. Okay. What I would like to do is
22 let's look at this draft letter and the final
23 letter side by side so we can compare Exhibit 18
24 to Exhibit 16.

25 If you look -- if you look at the

Dr. Thomas Marsoner - December 15, 2015

Page 176

1 MARSONER

2 draft, in the second paragraph, second sentence,
3 it states -- well, we'll start with the -- yeah,
4 second sentence, second paragraph: Previously I
5 was the head of European M&A and vice chairman
6 of Lehman Brothers Europe Limited from 2000 to
7 2006.

8 The second paragraph, second line of
9 the final letter which is Exhibit 16 states:
10 Previously I was the head of European M&A and
11 vice chairman of Lehman Brothers Holdings Inc.
12 from 1999 to 2006.

13 Do you know -- he originally stated he
14 was vice chairman of Lehman Brothers Europe
15 Limited.

16 Do you know why he changed that to
17 Lehman Brothers Holdings Inc.?

18 MR. VAN TOL: Object to the form.
19 Misstates evidence.

20 A. We have to assume that the 6 January
21 draft is a draft produced by my lawyers. The 7
22 January letter is one that Pignatti himself
23 marked up and instructed his secretary to sign.

24 So Pignatti corrected my lawyer's
25 false understanding that he was a VC of Europe

Dr. Thomas Marsoner - December 15, 2015

Page 177

1 MARSONER

2 Limited and put in the correct reality that he
3 was a VC of Lehman Brothers Holdings Inc. I
4 told you earlier both Pignatti and Magnoni were
5 very, very proud of their US roles. It was rare
6 for Europeans to have very senior US roles at
7 Lehman.

8 Q. Did you have a conversation with
9 Pignatti about this change?

10 A. No. No.

11 Q. If you look at the fifth paragraph of
12 the draft letter which is Exhibit 18, the last
13 two sentences of the paragraph: As was
14 customary, when a transaction was not explicitly
15 covered by one of the contracts, Lehman still
16 intended to pay Dr. Marsoner a success fee for
17 his F1 advice. Lehman accepted Dr. Marsoner's
18 requested remuneration by e-mail and orally.

19 Do you see that?

20 A. Yeah.

21 Q. Now, let's look at the same paragraph,
22 paragraph five of the final letter which is
23 Exhibit 16. The last two lines read: As was
24 customary, when a transaction was not explicitly
25 covered by specific advisory contract with a

Dr. Thomas Marsoner - December 15, 2015

Page 178

1 MARSONER

2 person like Dr. Marsoner who is a former
3 employee and recurrent provider of services,
4 Lehman still intended to pay Dr. Marsoner a
5 success fee for his advice.

6 Do you see that?

7 A. I see that, yes.

8 Q. Now, the sentence: Lehman accepted
9 Dr. Marsoner's requested remuneration by e-mail
10 and orally was removed from the original draft
11 and not included in the final draft.

12 Do you see that?

13 A. Not entirely. Pignatti just stated it
14 more elegantly. He stated it in this letter in
15 the same way he stated it at his deposition.

16 Lehman still intended to pay Dr.
17 Marsoner a success fee for his F1 advice. These
18 are his words, not a draft that I or my lawyers
19 submitted to him. And it was more clumsy
20 wording saying essentially the same thing, and
21 he presented a more elegant wording. That's
22 great.

23 Q. Did you have a conversation with Mr.
24 Pignatti why he deleted the statement: Lehman
25 accepted Dr. Marsoner's requested remuneration

Dr. Thomas Marsoner - December 15, 2015

Page 179

1 MARSONER

2 by e-mail and orally?

3 A. No, you see here how he decided this.

4 He marked it up, instructed his secretary to
5 .pdf it and print it out. I was not consulted.

6 Q. Unfortunately, Dr. Marsoner, we didn't
7 have a chance to ask Mr. Pignatti about this
8 because we didn't have the document during his
9 deposition.

10 MR. VAN TOL: We understand that.
11 That's the third time you said it. Doesn't make
12 it any more true or less true.

13 MS. ALVAREZ: That's fine.

14 Q. So I am going -- I have a few more
15 questions about this letter.

16 A. I understand.

17 Q. If you don't know, that's fine. I
18 understand why you wouldn't know.

19 The last -- actually the sixth
20 paragraph, last sentence of the draft states:
21 Without Dr. Marsoner's advice, Lehman may well
22 not have reinvested in F1, and instead may well
23 have sold most of its interests at the same time
24 as JPMorgan.

25 Do you see that?

Dr. Thomas Marsoner - December 15, 2015

Page 180

1 MARSONER

2 A. Hm-hmm.

3 Q. If we can look at Exhibit 16, same
4 paragraph, that line reads: Without Dr.
5 Marsoner's advice, Lehman may well not have
6 reinvested in F1, and instead may well have sold
7 all of its interests at the same time as
8 JPMorgan.

9 Do you know why Mr. Pignatti changed
10 the word "most" in Exhibit 18 to the word "all"
11 in Exhibit 16?

12 A. Because he obviously knew more than I
13 did and knew that Lehman was actively
14 contemplating selling all of its interest.

15 My point in the draft letter was
16 simply mirroring the JPMorgan action. JPMorgan
17 sold down from 17 percent to 3 percent, and I
18 assumed that it would have been sort of an
19 obvious course of action for Lehman to follow as
20 well, but Pignatti actually tightened up that
21 wording and said the alternative to staying in
22 was to get outdoor together which would have
23 been even more expensive than the JPMorgan
24 course of action.

25 Q. Did you have a conversation with Mr.

Dr. Thomas Marsoner - December 15, 2015

Page 181

1 MARSONER

2 Pignatti about this edit?

3 A. No, I did not.

4 Q. Let's look at the last sentence of the
5 draft letter which again is Exhibit 18.

6 The last sentence in the draft reads:
7 It was always my understanding that Lehman would
8 pay Dr. Marsoner 10 percent of Lehman's gross
9 revenues from the F1 investment.

10 Do you see that?

11 A. I can see that, yes.

12 Q. The last sentence of the final letter
13 which is Exhibit 16 reads: It was my
14 understanding that Dr. Marsoner would have been
15 paid by Lehman Brothers for his services
16 concerning the F1 investment or I would not have
17 asked him to help.

18 Do you see that?

19 A. I see that, yes.

20 Q. Do you see how the final letter does
21 not state that Lehman would pay Dr. Marsoner 10
22 percent of the gross revenues?

23 A. I don't see that at all. It says it
24 much more elegantly.

25 Q. Where does it say in this final letter

Dr. Thomas Marsoner - December 15, 2015

Page 182

1 MARSONER

2 that Lehman would pay Dr. Marsoner 10 percent of
3 Lehman's gross revenues from the F1 investment?

4 A. It says it in the paragraph above: F1
5 services similar in nature to the BAWAG.

6 Marsoner received approximately 10 percent.

7 And then in Pignatti's customary
8 elegance he got rid of the tautology of the last
9 sentence here, and in his own words, Pignatti,
10 unprompted, said: Would have been paid or I
11 would not have asked him to help.

12 With that he confirms my contention
13 that Pignatti actively in his capacity, as he
14 made clear, vice chairman of Lehman Brothers
15 Holdings Inc., asked me to help on F1 and fully
16 intended to pay me.

17 He also confirms that my services were
18 similar to BAWAG where I got 10 percent. The
19 way I read this, he could not have been clearer.

20 Q. Well, this letter says -- the final
21 letter states that you received 10 percent of
22 Lehman's gross revenues in BAWAG, correct?

23 A. The final letter says, yes, for
24 similar services to F1 I got 10 percent.

25 Q. And the draft letter states that it

Dr. Thomas Marsoner - December 15, 2015

Page 183

1 MARSONER

2 was Pignatti's understanding that Lehman would
3 pay Dr. Marsoner 10 percent of Lehman's gross
4 revenues from F1, correct?

5 A. Redundant. His letter is more
6 concise, more elegant and, if anything, says it
7 more strongly.

8 Q. But the draft letter does state that
9 Dr. Marsoner -- that you would receive 10
10 percent of the Lehman's gross revenues from the
11 F1 investment?

12 MR. VAN TOL: Objection, asked and
13 answered twice.

14 You can answer it again.

15 Q. Answer the question, please.

16 A. The draft is clumsy, redundant and
17 tautological. The final version is elegant and
18 says exactly what I'm contending in Vittorio
19 Pignatti's own words.

20 Q. Did you have a conversation with Mr.
21 Pignatti about how he made the -- why he made
22 these changes?

23 A. No. No. You had seen that I was not
24 consulted. He instructed his secretary
25 directly, and just did me the courtesy of

Dr. Thomas Marsoner - December 15, 2015

Page 184

1 MARSONER

2 letting me have a copy.

3 MS. ALVAREZ: I think the videographer
4 needs to switch tapes.

5 THE VIDEOGRAPHER: The time is 4:35
6 p.m. and we are going off the record.

7 (Recess)

8 THE VIDEOGRAPHER: This begins media
9 unit number five. The time is 4:54 p.m. and we
10 are back on the record.

11 BY MS. ALVAREZ:

12 Q. I'm going to mark another document as
13 an exhibit. This will be Exhibit 19.

14 (Marsoner Exhibit 19, Single-page
15 letter from Ruggero Magnoni to Judge Chapman,
16 United States Bankruptcy Court, Southern
17 District of New York, dated January 14, 2015,
18 and bearing no Bates stamp, marked for
19 identification)

20 BY MS. ALVAREZ:

21 Q. This is the letter that Mr. Magnoni
22 submitted to the bankruptcy court, and it is
23 dated January 14, 2015.

24 Do you see that, Dr. Marsoner?

25 A. I see that, yes.

Dr. Thomas Marsoner - December 15, 2015

Page 185

1 MARSONER

2 Q. How did it come to be that Ruggero
3 Magnoni submitted this letter to the bankruptcy
4 court?

5 A. I asked him to do so and I provided
6 the usual convenience draft for him.

7 Q. Did Mr. Magnoni make any edits to the
8 draft you provided to him?

9 A. I do not remember exactly, but I
10 believe that if he made edits they were very
11 light. He may well not have made any.

12 Q. Do you remember how many drafts were
13 exchanged?

14 A. Again, I do not remember precisely,
15 but I suspect he may just have accepted the
16 draft I submitted to him. I do not remember any
17 comments from him and I certainly do not
18 remember discussing this with him in any way.

19 MS. ALVAREZ: Let's take a look at the
20 next exhibit which is Marsoner 71 to 72, and
21 this will be Exhibit 20.

22
23
24
25

Dr. Thomas Marsoner - December 15, 2015

Page 186

1 MARSONER

2 (Marsoner Exhibit 20, Single-page
3 e-mail from Thomas Marsoner to Ruggero Magnoni,
4 dated January 14, 2015, with single-page
5 attachment, Bates stamped Marsoner00000071 and
6 721, marked for identification)

7 BY MS. ALVAREZ:

8 Q. Now, this is Bates stamped Marsoner 71
9 to 72. It is an e-mail from you, Dr. Marsoner,
10 to Ruggero Magnoni, with Vittorio Pignatti cc'd,
11 dated January 14, 2015.

12 Do you see that?

13 A. I see that, yes.

14 Q. In the -- well, the first paragraph
15 you state: Having discovered along the way that
16 I ought to have a claim in the US for the
17 services I provided, I have decided to pursue a
18 claim in respect of the LB/F1 matters.

19 Do you see that?

20 A. Yeah.

21 Q. Now, in the second paragraph you
22 state: With reference to our discussions around
23 this, I would be very grateful if you could
24 please look at the draft letter attached, check
25 to confirm it reflects reality accurately, mark

Dr. Thomas Marsoner - December 15, 2015

Page 187

1 MARSONER

2 it up wherever you think it might not, and send
3 a scanned, signed version back to me.

4 Do you see that?

5 A. I see that, yes.

6 Q. What are you referring to when you
7 say: With reference to our discussions?

8 A. Just like in the Pignatti case,
9 Magnoni and I have been discussing F1 since
10 1998. Magnoni had also kindly put in a letter
11 for me in the UK case and I would assume that I,
12 you know, that I was -- preannounced this e-mail
13 before I sent it, either in a conversation or
14 leaving him a voice mail or something along
15 those lines.

16 Q. Do you recall what conversation you
17 had with him about asserting a claim against
18 Lehman US prior to sending him this e-mail?

19 A. No, I -- no, nothing beyond what that
20 e-mail says.

21 Q. Did you have a conversation with
22 Magnoni after you sent him this draft?

23 A. No, I do not think I did. I do not
24 think I did. I think the facts in this letter
25 are very, very clear and very uncontentious. My

Dr. Thomas Marsoner - December 15, 2015

Page 188

1 MARSONER

2 best recollection is he just accepted the draft,
3 signed it and sent it back.

4 Q. Okay.

5 MS. ALVAREZ: We will mark hopefully
6 the final exhibit this is Exhibit 21.

7 (Marsoner Exhibit 21, 11-page document
8 entitled Plan Administrators' First Set of
9 Document Requests to Dr. Thomas Marsoner
10 Pursuant to Rules 7026 and 7034 of the Federal
11 Rules of Bankruptcy Procedure, bearing no Bates
12 stamps, marked for identification)

13 BY MS. ALVAREZ:

14 Q. Exhibit 21 is entitled: Plan
15 administrators' document request to Dr. Thomas
16 Marsoner pursuant to rules 7026 and 7024 of the
17 Federal Rules of Bankruptcy Procedure.

18 Have you seen this document before,
19 Dr. Marsoner?

20 A. I do believe so. I hope you will
21 understand that I cannot be certain because
22 there is an awful lot of language in here that
23 to a nonpracticing lawyer looks like legalese
24 boilerplate that you experts are here to
25 understand.

Dr. Thomas Marsoner - December 15, 2015

Page 189

1 MARSONER

2 Q. Do you understand what this is, what
3 Exhibit 21 is?

4 A. Yeah, I believe that this is --
5 further asks me to produce all the relevant
6 documents in my possession, particularly here
7 the, you know, Pignatti, Magnoni and Bernard
8 correspondence, all of which I, of course,
9 immediately produced to counsel.

10 Q. Do you see how starting on page 8
11 through page 10, specific categories or types of
12 documents are described and called for
13 production?

14 A. Yeah, yeah, I mean, I see that there
15 is a lot of stuff in here.

16 Q. When was the first time that you saw
17 Exhibit 21?

18 A. I think it was in the summer as an
19 attachment to an e-mail, but I cannot recall
20 exactly on what date that was.

21 Q. Did you conduct a search to locate
22 documents that are requested?

23 A. Yes, of course. Yes, of course I did.

24 Q. What did you do to locate responsive
25 documents?

Dr. Thomas Marsoner - December 15, 2015

Page 190

1 MARSONER

2 A. I used the key words here, Magnoni,
3 Pignatti and so on, and then forwarded those in
4 one bunch to counsel. And in terms of older
5 things, being through this exercise once before
6 for the UK case, I asked Hogan Lovells US to get
7 ahold of the Hogan Lovells UK file.

8 Q. So those key words that you put
9 together, what did you -- how did you use those
10 key words?

11 A. I mean, specifically, you know,
12 Bernard, Pignatti, Magnoni words, to be honest I
13 was a little bit surprised seeing that, this is
14 my first sort of full blown US court case,
15 punched them in, up came the whole
16 correspondence and forwarded it.

17 Q. What I'm trying to understand is where
18 did you punch them in? Are you talking about
19 e-mails?

20 A. My laptop, yeah.

21 Q. So you were searching e-mails on your
22 laptop?

23 A. Yes. Yes.

24 Q. What about your hard drive, did you
25 search your hard drive?

Dr. Thomas Marsoner - December 15, 2015

Page 191

1 MARSONER

2 A. I do not -- I mean, I have a laptop
3 which is connected to iCloud. I do not have a
4 server as such.

5 Q. What about thumb drives or any other
6 type of media where you may have stored
7 documents?

8 A. You have seen from this case, I am
9 hard of hearing. I do an awful lot of stuff by
10 e-mail, so I would not, other than in my e-mail,
11 I would really not know where to look for
12 things.

13 Q. Did you look through paper files?

14 A. You know, yes, of course, I looked
15 through my paper files, but those paper files
16 nowadays tend to be printouts of things that
17 were sent by e-mail.

18 Q. Where were those paper files located?

19 A. I have some in my home office in
20 London, I have some in our house in Lake
21 Millstatt in Austria. Those are the two main
22 desks that I have where I have -- where I still
23 have paper files, yes.

24 Q. So just to confirm, you searched your
25 paper files in London?

Dr. Thomas Marsoner - December 15, 2015

Page 192

1 MARSONER

2 A. Yes.

3 Q. And you searched your paper files in
4 Austria?

5 A. Yes. Yes.

6 Q. Do you have paper files anywhere else?

7 A. No.

8 MS. ALVAREZ: We're done with our
9 questioning. Thank you, Dr. Marsoner.

10 THE VIDEOGRAPHER: The time is--

11 MR. VAN TOL: I have questions.

12 EXAMINATION

13 BY MR. VAN TOL:

14 Q. Dr. Marsoner, could you please turn to
15 Exhibit 7 that was marked today?

16 You may recall seeing this earlier,
17 this is the e-mail chain regarding sweat equity.

18 A. Yes.

19 Q. I would like to draw your attention to
20 the first page which is LEH 201.

21 A. Yes.

22 Q. In the middle of the page do you see
23 there is a March 5 e-mail from Mr. Meissner to
24 Mr. Pignatti, the time is 16:36:37?

25 A. Yes.

Dr. Thomas Marsoner - December 15, 2015

Page 193

1 MARSONER

2 Q. In the second paragraph Mr. Meissner
3 writes: He is supposed to get a significant --
4 and there is a missing word, probably fee --
5 from IBD for his work which he deserves in my
6 opinion.

7 Do you know to whom Mr. Meissner is
8 referring there?

9 A. That's referring to me.

10 Q. In the next sentence Mr. Meissner
11 says: IBD fees (net) should be in the region of
12 25 million, so he'll expect around 2.5 million,
13 and I'm okay with that given his contribution.

14 Do you have an understanding of what
15 is meant there?

16 A. That's the margin loan, financing fee
17 of which the established practice is that I
18 would get 10 percent, yes.

19 Q. All right. And let's go to the e-mail
20 above that which is Mr. Pignatti's response.

21 Do you see Mr. Pignatti says: "So
22 let's compensate him with 10 percent and
23 eventually throw in extra 100K. "

24 Do you see that?

25 A. Yeah, I see that.

Dr. Thomas Marsoner - December 15, 2015

Page 194

1 MARSONER

2 Q. Do you have an understanding what Mr.
3 Pignatti means there?

4 A. He just confirms the 10 percent of
5 financing fees that Meissner states as a matter
6 of fact, and then he says, as I understand it,
7 as an extra tip for the extra work on the small
8 co-investment that the Lehman fund Pignatti ran
9 would make, let's give him an extra tip of a
10 hundred thousand. Euros, I presume.

11 Q. How if at all does the 10 percent
12 referred to in Marsoner 7 relate to the 2004
13 agreement to your understanding?

14 A. It's the result of the math that gives
15 me 20 percent of IBD fees which in the case of
16 financing would be 20 percent of half of the
17 financing fees, which would translate to 10
18 percent of the firm revenues in the case of
19 financings and principal investments.

20 MR. VAN TOL: I would like to have
21 this marked as Marsoner 22, please.

22
23
24
25

Dr. Thomas Marsoner - December 15, 2015

Page 195

1

MARSONER

2

(Marsoner Exhibit 22, Multipage

3

document entitled Notice of Hearing on Motion of

4

Dr. Thomas Marsoner to Deem Proofs of Claim to

5

be Timely Filed by the Claims Bar Date, with

6

multiple attachments, and bearing no Bates

7

stamps, marked for identification)

8

BY MR. VAN TOL:

9

Q. Dr. Marsoner, several times during

10

today's testimony you have referred to an e-mail

11

from a Graham Wilson.

12

Who is Graham Wilson?

13

A. Graham Wilson was the chief

14

administrative officer of Lehman Brothers

15

investment banking in Europe.

16

Q. You also referred to a spreadsheet

17

that Mr. Wilson prepared, do you recall that?

18

A. I recall that.

19

Q. I would like to turn your attention in

20

Marsoner 22 to Exhibit F.

21

Are you there?

22

A. Yes, I can see that.

23

Q. What is this document?

24

A. It's an e-mail from Graham Wilson to

25

me apologizing for a delay, but now authorized

Dr. Thomas Marsoner - December 15, 2015

Page 196

1 MARSONER

2 to agree and move forward with processing the
3 payment, and attached to that e-mail is the
4 spreadsheet that shows precisely how my fees for
5 the various components of the Cerberus BAWAG
6 acquisition was calculated.

7 Q. Could you explain this schedule for
8 us, please?

9 A. Sure. Starting with what we just
10 discussed earlier, the 25 million that Meissner
11 had estimated turned out to have been 22,154,688
12 Euros.

13 Q. Could you tell us where you see that
14 number? Could you describe it for us?

15 A. It's in the second line: Cerberus
16 BAWAG leveraged financing fees.

17 Q. Okay. Please continue.

18 A. Financing fees were shared 50-50
19 between the fixed income department and the
20 investment banking department. Where it then
21 says net IB revenues, there is something like 11
22 million. 20 percent of those 11 million amount
23 to 2.215 million Euros.

24 So that shows in two steps how the 10
25 percent of firm revenues that were the

Dr. Thomas Marsoner - December 15, 2015

Page 197

1 MARSONER

2 established standard between Lehman and me came
3 about in financing fees.

4 Q. Underneath there there is a box that
5 says less, L-E-S-S. It lists several things.

6 Can you explain what the function of
7 those numbers is?

8 A. Yes. Retainer fees, the earnest fees
9 that we discussed earlier were always deducted
10 from eventual success fees, and this shows --
11 this shows how those quarterly retainer fees
12 that I was paid, how those were deducted from
13 the success fee so that I would be paid a net
14 success fee.

15 Those are the two top --

16 Q. Are those the same retainer fees that
17 we saw referred to earlier in the 2004
18 agreement?

19 A. Oh, yeah, absolutely.

20 Q. Is there anything else on this chart
21 that you want to explain to us or have we
22 covered it all?

23 A. There is one very important thing,
24 that is, on line 4 and 5, you'll see two
25 principal gains. One is FX hedging where the

Dr. Thomas Marsoner - December 15, 2015

Page 198

1 MARSONER

2 firm made \$388,000 in that case, and another
3 principal gain out of a notional interest rate
4 swap by the firm again made \$552,000.

5 As per the formula in the '04
6 agreement -- by the way, also know the other
7 agreements -- that principal gain was, again,
8 divided 50-50 between the fixed income
9 department and investment banking, 20 percent
10 thereof, or 10 percent of firm revenues produced
11 the amount that I was owed.

12 Q. In the third line down in the top box
13 there is a reference to M&A fee.

14 Could you explain what that is?

15 A. The M&A fee is the mergers and
16 acquisitions fee. That belonged to the
17 investment banking department alone. Fixed
18 income had no share in that, and my 20 percent
19 of M&A fees remained 20 percent, so that in this
20 case I was paid nearly 2.8 million Euros out of
21 the M&A fee that Lehman made for Cerberus BAWAG.

22 Q. Why did you refer to the Graham Wilson
23 spreadsheet several times during your testimony
24 today?

25 A. Because it shows so very clearly that

Dr. Thomas Marsoner - December 15, 2015

Page 199

1 MARSONER

2 these percentages did not have to be in any
3 specific formal agreement. These percentages
4 were agreed between Lehman and me throughout our
5 advisory relationship. This was not in the '04
6 agreement, this was not in the '06 agreement.
7 It was exactly, like Formula One, governed by
8 the text and spirit of the '04 agreement and, as
9 you can also see in the previous discussion
10 between Pignatti and Meissner not involving me
11 in any way, completely noncontroversial between
12 all of various senior Lehman decision makers.

13 Q. Let's go back to that exhibit, please,
14 Exhibit 7, the e-mail exchange you were just
15 talking about.

16 A. Yeah.

17 Q. Do you see that in this e-mail
18 exchange there is at least two e-mails from you,
19 correct? There is the original one from you to
20 Mr. Pignatti, and then there is one on page 201
21 from, again, you to Mr. Pignatti, correct?

22 A. That's right, yes.

23 Q. I don't see any reference in those to
24 10 percent.

25 Why did you not say to Mr. Pignatti:

Dr. Thomas Marsoner - December 15, 2015

Page 200

1 MARSONER

2 I would like 10 percent?

3 A. I didn't have to. What I was asking
4 Vittorio here was something completely unrelated
5 to what the Graham Wilson e-mail states. Here I
6 was looking for something extra on a little
7 extra deal that happened around the big BAWAG
8 Cerberus deal where I thought I had provided
9 additional services on something other than
10 Cerberus BAWAG.

11 Ultimately I got nothing for that,
12 which is okay. Sweat equity would have become
13 worthless. It was not a very successful
14 investment originally.

15 Q. Now I would like to move on to another
16 topic.

17 We discussed earlier your claim
18 relating to LBI, LBCC and the collar, do you
19 recall that?

20 A. I recall it, yes.

21 Q. Do you recall when that claim was
22 submitted?

23 A. That must have been very soon after
24 the Lehman bankruptcy in September of '08.

25 Q. At that time did you have US counsel

Dr. Thomas Marsoner - December 15, 2015

Page 201

1 MARSONER

2 advising you on the submission of that claim?

3 A. No, not at all.

4 Q. When did you hire this firm, Hogan
5 Lovells LLP, to assist with the claim that's at
6 issue in this case?

7 A. Relatively soon after the UK
8 settlement. The UK settlement was, I believe,
9 in June of 2014, so I believe I hired Hogan
10 Lovells US in September, October of 2014.

11 Q. My last set of questions has to do
12 with Marsoner Exhibit 12, if you would like to
13 turn to that.

14 A. Yeah.

15 Q. I want to draw your attention to the
16 first page of this exhibit.

17 Do you see that it's a progress report
18 and that it's dated April 20, 2010?

19 A. Yes. I can see that.

20 Q. Do you know -- when you were asked
21 earlier about the bar date in this US
22 proceeding, do you know when the bar date was?

23 A. To this day I do not know it
24 precisely, but it must be in our motion.

25 Q. Sure. Let me see if I can just -- oh,

Dr. Thomas Marsoner - December 15, 2015

Page 202

1 MARSONER

2 we have it marked here.

3 Let me just show you, to speed things
4 up, this is page 3 of our motion, paragraph two.

5 Do you see a reference to a September
6 22, 2009 bar date?

7 A. Yes. I can see it, yes.

8 Q. So do you see that the bar date is in
9 fact before the progress report dated April 20,
10 2010?

11 A. By more than half a year.

12 MR. VAN TOL: Thank you. Subject to
13 any other redirect, that's all I have at this
14 time.

15 MS. ALVAREZ: We have a couple more
16 questions.

17 EXAMINATION

18 BY MS. ALVAREZ:

19 Q. Dr. Marsoner, if you go back to the
20 Graham Wilson e-mail which is Exhibit F to the
21 document marked Exhibit 22 during this
22 deposition?

23 A. Yeah.

24 Q. If you could take a look at it.

25 I'm just reading the text of the

Dr. Thomas Marsoner - December 15, 2015

Page 203

1 MARSONER

2 e-mail: Thomas, apologies for the delay, am now
3 authorized to agree with you and move forward
4 with processing the payment.

5 Do you see that?

6 A. Yes, I see that.

7 Q. Now, you testified that this e-mail
8 concerned your compensation for your work on
9 BAWAG, is that right?

10 A. Most of it, yes.

11 Q. Graham Wilson here states that he is
12 now authorized to agree this with you.

13 Do you know who authorized this?

14 A. No, I do not.

15 Q. Does a similar e-mail exist with
16 regard to your work on F1?

17 A. Does --

18 MR. VAN TOL: If it does, please
19 produce it.

20 I'm sorry, you may answer.

21 A. This -- sorry, your question is does
22 the equivalent of this e-mail exist relating to
23 my work on F1?

24 Q. That's right.

25 A. That, with respect, is an

Dr. Thomas Marsoner - December 15, 2015

Page 204

1 MARSONER

2 impossibility. The fees, the gross revenues
3 that are shown here for BAWAG Cerberus in the F1
4 case only materialized in May or June of 2012 at
5 which point Lehman had been bankrupt for more
6 than four years.

7 Q. Does there exist an e-mail indicating
8 payment had been authorized by Lehman to you for
9 F1?

10 A. It's the same answer. Revenues had to
11 crystalize first, only then could such an
12 attachment or such a cover e-mail be produced.

13 The earliest date it could have been
14 produced would have been May or June of 2012.
15 At that point Lehman wasn't around any more.

16 MS. ALVAREZ: That's all we have.

17 (Pause)

18 MR. VAN TOL: We have no further
19 questions either, thank you.

20

21

22

23

24

25

Dr. Thomas Marsoner - December 15, 2015

Page 205

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARSONER

THE VIDEOGRAPHER: The time is 5:24
p.m. on December 15, 2015 and this completes
today's video deposition of Thomas Marsoner.

* * *

E N D O F P R O C E E D I N G

Time noted 5:24 p.m.

* * *

DR. THOMAS MARSONER

Subscribed and sworn to before me
this_____day of_____, 2015.

NOTARY PUBLIC

My Commission expires:

Dr. Thomas Marsoner - December 15, 2015

Page 206

1

2

E R R A T A

3

STATE OF NEW YORK

4

COUNTY OF NEW YORK

5

I wish to make the following changes, for the

6

following reasons:

7

PAGE LINE

8

____ CHANGE: _____

9

REASON: _____

10

____ CHANGE: _____

11

REASON: _____

12

____ CHANGE: _____

13

REASON: _____

14

____ CHANGE: _____

15

REASON: _____

16

____ CHANGE: _____

17

REASON: _____

18

____ CHANGE: _____

19

REASON: _____

20

____ CHANGE: _____

21

REASON: _____

22

23

24

25

DR. THOMAS MARSONER

Dr. Thomas Marsoner - December 15, 2015

Page 207

1

2

C E R T I F I C A T E

3

STATE OF NEW YORK

4

COUNTY OF NEW YORK

5

6

I, BRANDON RAINOFF, a Federal Certified

7

Realtime Reporter and Notary Public within and for

8

the State of New York, do hereby certify:

9

That DR. THOMAS MARSONER, the witness

10

whose deposition is hereinbefore set forth, was duly

11

sworn by me and that such deposition is a true record

12

of the testimony given by the witness.

13

I further certify that I am not related

14

to any of the parties to this action by blood or

15

marriage, and that I am in no way interested in the

16

outcome of this matter.

17

IN WITNESS WHEREOF, I have hereunto set

18

my hand this 15th day of December, 2015.

19

20

21

22

BRANDON RAINOFF, FCRR, RMR, CRR

23

24

25

Dr. Thomas Marsoner - December 15, 2015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E R R A T A

STATE OF NEW YORK

COUNTY OF NEW YORK

I wish to make the following changes, for the following reasons:

PAGE LINE

17 4 CHANGE: "the" to "a"

REASON: Dr. Marsoner was not the only managing director.

24 2 CHANGE: "recall" to "call"

REASON: The correct phrase is "conference call"

25 21 CHANGE: "you" to "he"

REASON: "he" is the correct pronoun

30 25 CHANGE: "Ruppert" to "Rupert"

REASON: Misspelled name

31 11-13 CHANGE: "Ruppert" to "Rupert"

REASON: Misspelled name

37 15 CHANGE: "Hannon" to "Hannan"

REASON: Misspelled name

38 22 CHANGE: "telephoning" to "telephone"

REASON: Misspelled word

40 15 CHANGE: "with" to "that"

REASON: Incorrect word

44 12 CHANGE: "were" to "are"

REASON: Incorrect word

Dr. Thomas Marsoner - December 15, 2015

1

2

E R R A T A

3

STATE OF NEW YORK

4

COUNTY OF NEW YORK

5

I wish to make the following changes, for the following reasons:

6

PAGE LINE

7

51 15 CHANGE: "Nicky Lauder" to "Niki Lauda"

8

REASON: Misspelled name

9

57 18 CHANGE: "got" to "gone"

10

REASON: Incorrect word

11

61 24 CHANGE: Delete "for"

12

REASON: Unnecessary word

13

79 18 CHANGE: "Blackstone" to "Blackrock"

14

REASON: Incorrect company

15

90 22 CHANGE: Insert "Quod" before "Erat"

16

REASON: Incorrect phrase

17

102 13 CHANGE: Delete "being"

18

REASON: Unnecessary word

19

103 24 CHANGE: "Revco" to "Refco"

20

REASON: Incorrect company name

21

110 5 CHANGE: "Biergen Kreiger" to "Jürgen Krieger"

22

REASON: Misspelled name

23

118 9 CHANGE: "credit risk committee" to "creditors' committee"

24

REASON: Dr. Marsoner and Bruce Matthews served on the creditors'

25

committee

Dr. Thomas Marsoner - December 15, 2015

E R R A T A

STATE OF NEW YORK

COUNTY OF NEW YORK

I wish to make the following changes, for the following reasons:

PAGE LINE

124 22 CHANGE: "heard" to "had"

REASON: Incorrect word

136 21 CHANGE: "." after "LBEL" to "?"

REASON: Dr. Marsoner was asking whether Ms. Alvarez meant LBEL
because he is only aware of the LBEL proof of claim form, not
the LBI proof of claim form

137 17 CHANGE: Delete "because"

REASON: Unnecessary word

140 11-12 CHANGE: "Casa Peliganos, Costa Keretes" to "Casa Pelicanos Costa
Careyes"

REASON: Incorrect address

140-41 25-2 CHANGE: "Casa Carrion Parco, San Giacomo" to "Casa Carpione Parco
San Giacomo"

REASON: Incorrect address

141 5 CHANGE: "only" to "Lake"

REASON: Incorrect word

153 5 CHANGE: Insert "have" after "would"

REASON: Necessary word

Dr. Thomas Marsoner - December 15, 2015

E R R A T A

STATE OF NEW YORK

COUNTY OF NEW YORK

I wish to make the following changes, for the following reasons:

PAGE LINE

159 19 CHANGE: "Meine agide" to "Meine Aegide"

REASON: Misspelled word

161 17 CHANGE: "2002" to "2009"

REASON: Incorrect year

161 23 CHANGE: "corrected" to "correct it"

REASON: Incorrect word

169 24 CHANGE: "supported" to "supporting"

REASON: Incorrect word

180 22 CHANGE: "outdoor together" to "out altogether"

REASON: Incorrect phrase

198 6 CHANGE: "know" to "in"

REASON: Incorrect word



DR. THOMAS MARSONER